

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL,  
SPECIAL REDEVELOPMENT AGENCY MEETING,  
AND MORGAN HILL FINANCING AUTHORITY COMMISSION MEETING  
MINUTES – NOVEMBER 19, 2003**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 5:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency/Commission Members Carr, Chang, Sellers, Tate; and Mayor/Chairman Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council Action***

**WORKSHOP:**

1. (A) **REVIEW OF MEDICAL SERVICES OBJECTIVES; and**  
(B) **CONSIDER MORGAN HILL COMMUNITY HEALTH FOUNDATION'S (MHCHF) INPUT TO THE CITY COUNCIL POLICY ON HEALTH SERVICES**

City Manager Tewes indicated that this workshop arose from a Council's goal setting session held last February where the Council indicated that in the light of the progress made to date, it would be appropriate to review the medical services objectives. He indicated that he provided the Council with a copy of the existing medical services objectives adopted in April 2000, the history of the objectives, and to what extent, if any, they have been achieved. He said that included in the packet are recommendations from the Morgan Hill Community Health Foundation about revisions they propose to these objectives. He informed the Council that on the dias is a revised updated version of the Foundation's recommendation. He presented a background history relating to the objectives and the actions that have taken place to date. He stated that a lot of things have changed in the medical services area, noting that the Council's policy objectives were written in April 2000. The Council indicated that they wanted to review the medical objectives to determine if they were still relevant and/or whether there were new objectives that should be adopted. He indicated that the medical services objectives have been divided into primary and secondary objectives. He felt that it was the Council's intent to identify the importance of some of the objectives over the others. He noted that a time frame was not established in the implementation of the objectives. He said that although an acute care hospital objective is listed first, he did not believe that there was a clear indication of priority in the way that the objectives were listed. He indicated that the Foundation is suggesting that the Council divide the objectives in terms of

implementation timeframes. He stated that the Foundation has not given any indication as to which objective is more important over the other. He said that one thing that the Council may want to consider is whether or not it wants to establish priorities among the objectives. He clarified that these are statements about what the Council wants to accomplish but not how to accomplish them. When the Council supported the establishment of a Foundation, it provided additional funding for the Foundation and assigned them the responsibility for implementing these objectives. He indicated that Foundation members were in attendance as were representatives from the Daughters of Charity. He stated that the purpose of this workshop is for the Council to review the expected outcomes to see if these are the objectives it wishes to pursue based on 3.5 years of history.

Mayor Kennedy opened the floor to public comment.

Joe Mueller, representing the Morgan Hill Community Health Foundation, indicated that the last minute change to the document presented to the Council by the Foundation was to focus on timeframes of when things would be completed. He said that one thing to remember is that the Foundation now has a partner to work with who wants to deliver medical services from the existing facility. He felt that the Foundation is in the position to start talking about what services can be added and identifying the time period for implementing these services. He noted that the opening policy statement recognizes that  $\frac{1}{3}$  of Morgan Hill citizens use Kaiser and that there is a second major provider to the citizens of Morgan Hill. The Foundation would like to make medical services available to everyone.

Joann Allen, Senior Vice-President and Chief Strategic/Medical Services Officer, O'Connor Hospital/DePaul Health Center, presented the Council with an update as to what has taken place regarding physician recruitment, indicating that discussions have been focused on long term partners for the general acute facility. She reminded the Council that it has been less than six months since O'Connor has been involved with the DePaul Health Center. O'Connor has been able to renew discussions with the physicians originally interested in St. Louise. She felt that significant progress has been made on leasing space. She stated that tenant improvements are taking place and that physicians are looking forward toward having leases and moving into the facility. She identified the physicians who were interested in moving into the DePaul Health Center, including discussion with out of state physicians, a husband and wife (Shaws) internal medicine physicians coming from Kentucky. She indicated that the Shaws have their California licenses and are planning to move into the facility in February or March 2004. She said that Mrs. Shaw will be opening her practice with Mr. Shaw being an employee until they get enough patient volume to have full office medical practices at the facility. She indicated that St. Louise will be providing basic radiology and lab services. She has had discussions with long term acute care physicians as well as Kaiser Permanente representatives and the assisted living facility that is being proposed. O'Connor is looking at joint ventures in terms of physicians for MRI services and other diagnostic/radiology services. She felt that O'Connor and the Foundation are moving forward. She understands that the Council believes that this has been a long road but that they are not sitting back, but moving forward. She felt that the medical objectives need to be done correctly; giving priority to Morgan Hill physicians and then opening it up to other physicians and specialist at the O'Connor Hospital site. She has received good responses and that physicians are signing leases. She stated that there is activity movement around the DePaul Health Center.

Mayor Pro Tempore Chang noted that it was indicated that Dr. Shaw will be the City's first internal physician coming into Morgan Hill. She noted that the other physicians mentioned were ones that are already in Morgan Hill. She inquired whether it was the plan to increase the amount of primary physicians next year.

Ms. Allen said it is proposed to have both Drs. Shaw move their practices to Morgan Hill from Kentucky. She stated that the Shaws would like to have a successful transition in terms of their financial viability. She is also having these discussions with other physicians in the community and determining whether they would like to bring in a partner. She stated that she has been involved in physician recruitment for a long time. She said that it is usually an easier transition for a new physician to come into the community under existing physicians. O'Connor Hospital is very supportive of making sure that the primary physicians have a successful transition and successful practices. She said that O'Connor Hospital is open to looking for additional primary care physicians but that they are also looking for physicians that will support whatever the general acute side provides. This could be to having specialists provide services for out patient surgery. She felt that the focus is to support a primary care base as well as a specialist base. She reiterated that O'Connor would like to make sure that physicians will be successful when they are recruited, will be able to stay in the community and provide services in the community.

Mayor Pro Tempore Chang requested that updates be presented every three months.

Ms. Allen said that she would be willing to provide monthly updates. She understands that this has been a long process for the City of Morgan Hill but that from O'Connor's perspective, it has been a short time since their involvement. She said that it took time to regain the trust of the physician community and outside services but that it is being done. St. Louise Regional Hospital is a member of the Daughters of Charity and that O'Connor Hospital is supportive of this fact. However, O'Connor is trying to put the DePaul Health Center as first and foremost. She said that they recently learned that Catholic Healthcare West de-licensed the facility and that this was never mentioned in any of the reports. She is looking long term of meeting the goal of providing a general acute facility. She said that O'Connor Hospital may be transferring their 50 beds to the DePaul Health Center. O'Connor is looking at all options and being extremely creative as to what can be done with the facility. She indicated that it will take a \$6-8 million capital commitment to turn the lights back on in the facility.

Mayor Pro Tempore Chang inquired as to what will be seen next year this time. Will the community see 5-6 new primary care physicians?

Ms. Allen said that the City will be looking at what the community is able to support. She said that the 5-6 primary care physicians include the Kaiser population. The community would be looking at 2 more primary care physicians moving into the area. She would encourage other primary care physicians to relocate to the area. However, she would like to ensure that there are successful partnering practices at the DePaul Health Center. She would also encourage new primary care physician at the Morgan Hill site with established physicians. While the Shaws and Dr. Brian Joyce may be the base, there are other

physicians in Morgan Hill that are currently practicing that could also be the base and add to their practices. She indicated that the facility should provide the right combination of specialist physicians that support primary care practices. Having a time share will be important in terms of recruiting specialists as this will reduce the financial burden. She indicated that space has been dedicated for time shares in order to have the opportunity to bring in specialists so that these services can be provided in Morgan Hill versus going north for these services.

Council Member Tate noted that the Council's adopted medical services objectives 3.5 years ago and felt that there has been zero measurable progress made to the objectives to date. He inquired whether there was anything else that the City could do to direct the Council's expectations correctly. He noted that the community does not have an urgent care facility that citizens can use. He would like to set an objective of providing urgent care services associated with a time frame that can be measured. He felt that the Council may have been wrong in having too generic objectives that did not identify time frames. He suggested that the Council select a few objectives to be accomplished over a shorter time period.

Ms. Allen inquired as to the Council's priorities in terms of the objectives identified. She felt that O'Connor Hospital would have a medical office building 90% leased by July 2004 and that laboratory and radiology services will also be provided at the site. O'Connor is talking to physicians who are interested in extended hours and looking at the initial stages of an urgent care. Should the Council direct that this objective be achieved by June 2004, O'Connor can work toward this objective. Lab and imaging services will be provided at the DePaul Health Center by July 2004. The initial stages of urgent care to be completed by July 2004 (e.g., extended hours). Regarding primary care, she would like to set a goal for primary care beyond the Shaws. However, she felt that it was important to have the Shaws become successful. If she was to state that by July 2004, the City would have two additional primary care physicians, it would not be giving the Shaws the opportunity to be successful. She indicated that she has not talked to the primary care physicians in Morgan Hill to determine who is willing to have a partner and that these discussions need to take place. It could be stated that by July 2005, two additional primary care physicians would be recruited.

Council Member Tate recommended that another workshop be held in July to see what has been accomplished.

Mayor Pro Tempore Chang stated that she would like to see the addition of an internal medicine, OB-GYN, and pediatrician physicians by July 2004.

Council Member Carr felt that the Daughters of Charity and O'Connor Hospital have conducted market studies for this area. He inquired as to the number of primary care physicians Morgan Hill's population would support.

Andrew Barna, Director of Strategic Development, O'Connor Hospital, said that when you plan for how many physicians can be supported by a community, you have to look at existing physicians in terms of how busy they are. He said that it might be good for the Council to state that in six months it should investigate how the Shaws' practice is doing. If their practice is good and builds up, he felt that another

interest could be supported. He said that the population may be able to support an OB-GYN, but it needs to be determined what the current usage is.

Ms. Allen said that O'Connor's recruitment efforts require physicians to accept all medical insurances, including Medical and HMO patients. She stated that physicians have to be willing to provide services to all patients. She indicated that she could not respond to the number of primary care physicians the community could support and that she would have to look at this specifically. If practices are full, it would promote the need for additional physician recruitment.

Mayor Pro Tempore Chang noted that there are no female OB-GYN physicians practicing in this community and that there are only two pediatric physicians in town. She said that the City does not have family doctors; indicating that the community is short of doctors. She felt that the senior population needs to be taken care of.

Ms. Allen felt that bringing in the Shaws into Morgan Hill would be a good start for primary care. Discussions are taking place with OB-GYN physicians to bring them into the Morgan Hill facility. She felt that there has been a well rounded physician recruitment effort.

Council Member Sellers agreed that the Council needs to quantify the objectives. He felt that dividing the list into short and long term objectives was a misnomer as some of the long term objectives make reference to short term objectives and some of the short term objectives talks about 20-years from now. He noted that one of the references is to try and secure an operational health care system over a period of not less than 20-years. He inquired whether O'Connor's objectives/planning anticipate that this will become a full service hospital at some point in time. In thinking about the possibility and likelihood that this would take place; what would be a reasonable timeframe?

Ms. Allen said that an acute care facility can be supported in 10-years as Coyote Valley develops.

Council Member Sellers noted that the statement that "acute care and hospital will be achieved within the next three-years and preserve flexibility" is referenced twice. He inquired whether the three-year reference had some specific significance.

Ms. Allen said that she was looking at the objectives such that the acute care could be a speciality and not a general acute care facility. O'Connor was contemplating a long term acute facility and skilled nursing facility. She said that the only caveat is the fact that with the de-licensing, there may be an issue of putting this type of service in this facility within the next 3-years. Thus, the reason for the statement "but if unable to achieve this..." O'Connor was hoping to be creative about licensing with the State. If O'Connor is not able to attain State licensing, thought has to be given to what services can be provided. She did not want to sit and wait for a long term acute care facility. O'Connor is looking at short term services such as out patient services.

City Manager Tewes felt that the Council needs to be clear as to its objectives.

Council Member Sellers recommended that the bullet points be reversed in reference, initially. He recommended that within the next three years, there be discussion about preserving the flexibility for either the conversion of the existing facility into an acute care facility. His second bullet point would be to develop an urgent care facility with the goal of eventually providing emergency care. Turning them back around would allow the goals to be quantifiable at the front end. It could be stated that within 3 years, the City would like to have urgent care up and running in a way that will allow the City to continue to get to the ultimate goal of providing emergency care. Within 3 years, preserve flexibility about the conversion of the facility with the goal of long term care. He recommended that Ms. Allen go through the rest of the objectives and quantify these. He felt that the short term and long term references were misleading because some of the long term objectives have short term components and vice-versa.

Mr. Mueller said that if the Council is trying to quantify these goals, it might be good for the Council to give guidance. The Foundation and the DePaul Health Center team could come back with quantifiable goals, incorporating numbers. He did not recommend that the numbers be worked out this evening. He would like to quantify the objectives that the two organizations would be willing to stand by, but that he does not want to identify them this evening. If an acute care facility cannot be delivered, he inquired whether an urgent care facility would be acceptable. He wanted to retain the flexibility to get to the final goal that is important. If the Council wants quantifiable goals, the two organizations can return with short term quantifiable goals that will allow them to meet the long term objectives. He felt that they could return to the Council in the first meeting in January.

Council Member Tate stated that he was interested in short term goals with measurable successes.

Council Member Carr recommended that it be requested that both organizations return with a set of six-months, one-year and three-year goals. He inquired whether the DePaul Health Center or O'Connor Hospital conducted an analysis of the greatest needs in the different areas.

Ms. Allen stated that St. Louise had conducted an analysis, indicating that she would like to work with St. Louise in terms of their physician recruitment strategy. She stated that St. Louise has their demographics, including Morgan Hill's demographics. She said that she would like to return to the Council to see what will work in terms of building up a primary care base in Morgan Hill. She would perform an analysis on the needs. She did not know if St. Louise focused specifically on Morgan Hill versus South County for primary services.

Council Member Carr felt that focusing on the needs would be helpful to the Council as this is an area that he expected some information and work. He would like to continue with the emphasis in the area of physician recruitment in terms health care needed in Morgan Hill.

Mayor Pro Tempore Chang felt that the Camden report indicates that the community can support up to 18 physicians. She felt that the Foundation established a goal approximately a year of ago of recruiting 5-6 primary care physicians. She felt that it may be found that additional primary care physicians can be accomplished.

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Mr. Mueller felt that Ms. Allen raised a good point earlier. He said that there has been recent experience that if you add too many primary and one specialty physician, they would not be successful. He said that they do not want to repeat this incident. He felt that there was a difference between having a demographic need versus having the ability to absorb the doctors. The City needs to remember that the citizens have adjusted their method of getting health services over this time period. There will be a certain amount of changes that will need to take place. The City will need to be careful of the absorption. When a doctor is brought into the community, it needs to be assured that the doctor will be successful.

Council Member Carr stated that instead of stating that the City would like to see 3-5 doctors within six months to a year, he would rather have the discussion on the needs for the community and how to set the goals to meet these needs.

Mayor Kennedy summarized the consensus of the Council. It is being recommended that the Council ask the Foundation and the DePaul Health Center to go back and jointly develop a plan with a 6- month, one-year, three-year and ten-year goals. The report would be presented at the Council's first meeting in January. He felt that the objectives need to be rearranged as they are presented. He suggested that short term objectives be presented first rather than the long term objectives. He did not believe that the statement "within the next three years" was needed. The goal is to achieve a general acute care hospital.

Council Member Tate respected the comments expressed by Mayor Pro Tempore Chang that the City needs to be as aggressive as possible. However, he felt that medical services have to be successful. He felt that there is a priority of doing what is achievable and attaining success. Trying to do too much at the same time may result in failures.

Ms. Allen said that the DePaul Health Center wants to make this facility a success. She is trying to make sure that the right physicians and services are provided. She did not want to throw everything in there just for the sake of filling space as this is not the objective. She wants to put the right physician mix/right pair mix into the facility and provide the services; looking at urgent care services. She wants the physicians and the center to be successful, looking at long term viability.

Council Member Sellers requested that the Foundation/DePaul Health Center quantify the six month goals to the degree possible. Also, identify the City's role in the objectives. He inquired whether there would be a need to have staff and/or Council direct involvement, and if so, to what degree would this be helpful. Is the Foundation and DePaul Health Center in a position to where City staff and Council assistance is no longer necessary? He did not recommend that the City be restrictive of the list. If there are other things that need to be included, he recommended that they be identified (e.g. assisted living). He requested that the terms be defined to make sure that everyone is on the same page (e.g., ambulatory surgery center). In looking at the list, the Council did not prioritize the list of objectives. He further requested that the Foundation and the DePaul Health Center prioritize the objectives.

Mayor Pro Tempore Chang stated that it was her belief that recruiting primary care physicians was the number one priority. In order to retain laboratory services, she felt that additional primary care physicians would be needed.

Ms. Allen said that a broad mix of physicians would support routine radiology and laboratory services. She indicated that they are looking at primary care physicians, noting that the Shaws are coming to the community. She will have discussions with the visiting physicians to see if they could support another physician in terms of recruitment.

Mayor Pro Tempore Chang requested that the DePaul Health Center investigate to see if the community could attract primary care physicians such as OB-GYN, pediatrician, and family care physicians. She indicated that a lot of citizens are calling her requesting primary care physicians in Morgan Hill so that they do not have travel to San Jose.

Ms. Allen said that as physicians are recruited it needs to be understood that they will take on pairs, accepting all insurance.

**Action:**            **No Action Taken.**

## ***City Council and Redevelopment Agency Action***

### **CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items. She indicated that in regards to conference with Legal Council – Anticipated Litigation, one of the items is based on a threat of litigation by a phone call from Barton G. Hechtmann, Matteoni Saxe and O’Laughlin, that occurred on November 17, 2003 concerning Arcadia Development.

#### **1.**

##### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

#### **2.**

##### **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 215 Tennant Avenue, APN: 817-04-002  
Negotiating Parties:  
    For City: City Manager, Director of Public Works, and Attorney Gale Connor  
    For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin  
Closed Session Topic/Under Negotiation: Price and Terms of Payment

#### **3.**

##### **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 95 Tennant Avenue, APN: 817-04-008



Negotiating Parties:

For City:	City Manager, Director of Public Works, and Attorney Gale Connor
For Property Owners:	Marko and Klara Gera
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

**4.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority:	Government Code 54956.8
Property:	145 Tennant Avenue, APN: 817-04-008
Negotiating Parties:	
For City:	City Manager, Director of Public Works, and Attorney Gale Connor
For Property Owners:	Joseph Hernandez, as trustee; et al
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:18 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:05p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

Mayor/Chairman Kennedy indicated that he would give Ted Glenn the opportunity to speak on the closed session at the appropriate time.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Sergeant Hernandez led the Pledge of Allegiance.

### **CITY COUNCIL REPORT**

Council Member Sellers reported on the Indoor Recreation Center (IRC). He said that this is an exciting project and that a Council subcommittee has been formed to oversee this project. He indicated that he and Mayor Pro Tempore Chang are co-chairing and overseeing the development of the IRC. He stated that one of the challenges being faced is that this is a new facility, a building/development that the City or the region has not had before. The City is being faced with dual challenges of making sure that this project comes in on budget and making sure that the facility meets the long term future needs of the community. The subcommittee has embarked in checking back with all community organizations, including the Youth and Senior Advisory Committees. He encouraged the community to provide thoughts, questions, or issues relating to the IRC, especially relating to internal development as the footprint and overall size of the facility have been identified. He said that there are significant issues in terms of the uses within the facility that the Council is still addressing. He stated that citizens can contact him, Mayor Pro Tempore Chang, Council Members or staff with suggestions to make sure that they are incorporated in the IRC.

Mayor Pro Tempore Chang invited the public to a groundbreaking ceremony scheduled for December 1, 2003 at 11:30 a.m. She indicated that this is a South County Day Worker Committee event with the help of all Council Members, the Mayor, City Manager and staff. She stated that the Mayor's Ball is scheduled for December 31, 2003 to benefit the dayworker center.

Mayor Kennedy indicated that a New Year's Eve celebration/party will be a fundraiser event for the construction of the dayworker center to be held at the Community Center. He stated that the theme would be a Celebration of New Year's around the world.

### **CITY MANAGER REPORT**

City Manager Tewes stated that the City has been routinely testing domestic water wells for the contaminant perchlorate. He indicated that the most recent test shows that all City wells have no detectible levels of perchlorate at the standards established by the State Department of Health Services. He said that the City has begun to observe some seasonality to the readings; indicating that perchlorate tends not to be present in the winter months and when there is not a high level of water pumping. He also reported on the Motor Vehicle License Fee (VLF) and the impacts of the decisions being made in Sacramento. He said that approximately 12% of City's general fund budget is financed by the City's share of these fees. This week, Governor Schwarzenegger has issued an executive order which has the effect of reversing a previous finding regarding the State's finances. As a result, the car tax will go back down to the level established when it was reduced a couple of years ago. He said that the State is responsible for filling the difference between the revenue of the prior levels and the new level. However, the State has to find the money to fulfill this obligation. The Governor has indicated that it is his expectation that he will include this year's backfill in a bond issue that he hopes the legislators will pass and place before the voters in March 2004. If this occurs, there will be no reduction in the amount of VLV revenue that the City would receive. However, should the legislature adopt a budget that does

not include this money and they amend the law, the City would still be at risk of losing about 12% of the City's general fund budget.

### **CITY ATTORNEY REPORT**

City Attorney Leichter indicated that she did not have a report to present this evening.

### **OTHER REPORTS**

Mayor Kennedy stated that he attended a perchlorate citizen's advisory group meeting in San Martin, indicating that he serves on this committee. He stated that there was a presentation from the Regional Water Quality Control Board on the actions that Olin is taking to clean up the site. He said that the Board has authorized them to proceed with remediation, removal, and treatment wells and systems at the Olin site. In addition, Olin has now admitted that the flow of the perchlorate can go north and east of the site and that they will have to do something to address this issue as well. He stated that there is another issue that is important to San Martin residents and those who have their own wells that rely on the San Martin aquifer. He said that the Department of Health Services is in the process of certifying several devices that will work on point of use systems in the home to remove perchlorate. In addition, there are well head treatments systems (ion exchange systems) to remove perchlorate in wells. He said that there is a lot of action taking place and that he was pleased with the progress being made.

### **PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Ted Glenn, real estate broker, indicated that he represents the owners of the property at 145 Tennant Avenue, the Hernandez Trust. He said that he was unaware that closed sessions regarding Tennant Avenue properties were being held this evening. It was his belief that the values that were arrived for this property and others were not in line with what the fair market value dictates. He has sent in several different break downs of how he arrived at values and that he has asked for consideration of these values. He said that he has not received a response on these values. He stated that he has been in the real estate business as a broker and an appraiser for many years. He did not understand how the City's appraiser arrived at the values or the approach taken unless he received instructions from the City or the City's representatives as to what approach to take. He said that the City's appraiser's value of the property is below what it is worth.

Gina Six and Sergeant Hamm addressed the mission of the United States Marine Corp Reserve's *Toys for Tots* program of collecting new, unwrapped toys during the months of October, November and December of each year for needy children in the community. Sergeant Hamm indicated that these new toys are delivered to a child at Christmas. It is a message of hope to needy children that will motivate them to be responsible, productive and patriotic citizens in the community. He presented a history of the Toys for Tots program campaign. He informed the public that toys can be dropped off at City Hall and the Community Center.

Chris Cote, Executive Director of the Hollings Cardaway Foundation in Gilroy, proposed a new wireless telecommunication ordinance in Morgan Hill. He indicated that wireless ordinances have recently been enacted in Watsonville, Santa Cruz, Gilroy, San Benito County and Santa Cruz County. He stated that his foundation assisted in the authoring of these ordinances. He said that the public's interest in wireless telecommunication ordinances stems from concerns regarding electro magnetic fields emitting radiation and associated health issues. He said that ordinances specifically dissuaded the placement of radiation emitting transmission towers near homes and schools via an incentive conditional use permit process. He stated that recent studies have indicated that children's DNA is likely to be susceptible to broadcast radiation induced mutations. The ordinances have been structured in such a manner to ensure that no tax payer dollars are used in the implementation or the enforcement of the regulations. He stated that all costs are borne by the cell phone and wireless phone companies making applications with a city. Many local real estate experts have indicated that property values rise when towers are properly located in non residential neighborhoods. He said that the City Attorney and staff will advise the Council that any ordinance created has to comply with the Federal Communications Act of 1984. He said that cities cannot mandate transmission towers be prohibited from any part of the city solely on the basis of health or environmental concerns. However, cities can adopt a telecommunication ordinance on the basis of zoning, aesthetics or any safety regulations that are not covered by federal regulations. He encouraged the City of Morgan Hill to look into the creation of an ordinance similarly to those adopted by surrounding communities. He stated that he would be happy to assist the City with a similar ordinance.

Bruce Tichinin indicated that he represents the Carrascos. He noticed that the agenda lists him as a negotiator for his clients. He stated that he would like to negotiate with the City on behalf of the Carrascos. He indicated that his clients rent the residence that will be demolished in the condemnation proceeding and that they would like to keep renting the residence. He indicated that his clients are requesting that the City move the residence back in order to permit the road widening. He read from Section 1263.260 of the Code of Civil Procedures which states that "The owner of improvements pertaining to the realty may elect to remove any improvements ... and shall be compensated for the reasonable removal and relocation costs not to exceed the market value of the improvements." If his clients make this election, they would have to forgo the \$32,500 that the City is currently offering. It is his hope that consideration will be given to his client's request to move the house back and give them all the other damages proposed except severance damages.

Mark Grzan expressed concern with the comments made by the City Manager about no detectable levels of perchlorate being found in the City's water. He said that it was his understanding that the City is only able to measure 4 parts per billion and that measures below this could be in the City's water supply. He wanted to make it clear to the public that when it is stated that there is no detectable level of perchlorate that there still is perchlorate in the City's water system. The City elected to only measure to the State's standards and hold to those State measuring standards. It was his understanding that there are no EPA standards for perchlorate. However, there is an EPA advisory of 1 part per billion for human consumption and that three states are moving to this level as their maximum contaminate level. He felt that any population at risk should know that there is a potentially dangerous contaminant in the City's water system and that they should take the appropriate action.

Chuck Dillmann stated that a situation that needs to be considered before moving forward with a brew pub is the intersection of Monterey Road and Main Avenue, indicating that the intersection is too narrow. He stated that one car waiting to turn left backs traffic up three blocks and that if one tries to pull around this car, you get ticketed. He felt that the City needs to consider the need to either move the building or demolish part of it before allowing it to develop into something else.

Sergeant Hernandez presented the City of Morgan Hill with a Certificate of Appreciation for its assistance with the Toys for Tots program.

Jeannie Gregg, Library Commission chair, speaking as a citizen who is working on a campaign to pass a parcel tax to support the operating funds of the library, indicated that this will be a ballot measure on March 2, 2004. She said that in the early 1990s the City experienced a recession and the County cut funding for libraries, indicating that the Morgan Hill library was reduced to 35 hours per week. She indicated that the City had 54 hours of service per week and that citizens were concerned about having limited library services. Therefore, a grassroots effort was formed, noting that a successful tax measure passed in 1993 that went into effect in 1994. This was a tax of \$33 per parcel that would last for 10 years. She noted that this parcel tax is about to sunset and that citizens are in the process of starting a campaign to have a new tax take the place of the old tax. She indicated that she held an organizational meeting at her home on Monday evening to get citizens together to start working on a ballot measure. She is finding that there is a lot of disillusionment on the part of strong library supporters. These library supporters are unhappy and are feeling that they worked hard to get the RDA passed with the understanding that one of things that would happen is the construction of a new library. They are seeing a new cultural center, a new theater, soccer fields, and new swimming pools; but no new library. Therefore, citizens are not willing to support a parcel tax to support operating the library. She felt that it was important that the Council realize that this is happening. She stated that people believe that they voted to get a new library and that they do not one. Therefore, they will not be able to support new library taxes. She stated that this will be a serious uphill battle that will be fought when the City tries to get more money to operate the library, and will become a real issue because the City will be addressing more cuts in the future.

No further comments were offered.

Mayor Kennedy requested that staff agendaize a wireless telecommunication ordinance raised this evening. He addressed the perchlorate treatment that was installed at the Nordstrom well, noting that the City is no longer running this well. He said that the first bank of chlorate removal/ion exchange resins was required by the State to test at 4 parts per billing. He indicated that the City has a secondary back up system that is beyond this standard that would remove the perchlorate to an even lower level. He indicated that the Council has been very cautious and careful and not simply relying on the four parts per billing standard; ensuring that the City delivers water that is safe to residents.

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Tate requested that item 12 and Mayor Pro Tempore Chang requested that item 13 be removed from the Consent Calendar.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-11 as follows:*

2. **OCTOBER 2003 FINANCE & INVESTMENT REPORT – CITY COUNCIL**  
**Action:** ***Accepted** and **Filed** Report.*
3. **RECWARE RECREATION SOFTWARE CONTRACT**  
**Action:** ***Authorized** the City Manager to Enter Into a Contract with RecWare Recreation Software in an Amount Not to Exceed \$25,000, Upon City Attorney Approval of the Contract Terms.*
4. **CONSIDERATION OF GENERAL PLAN AMENDMENTS IN DECEMBER**  
**Action:** ***Scheduled** General Plan Amendment Hearing for December 17, 2003.*
5. **ACCEPTANCE OF EDMUNDSON RESERVOIR PROJECT**  
**Action:** *1) **Accepted** as Complete the Edmundson Reservoir Project in the Final Amount of \$1,417,657.26; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
6. **AQUATICS CENTER PROJECT – OCTOBER CONSTRUCTION PROGRESS REPORT**  
**Action:** ***Information** Only.*
7. **REIMBURSEMENT FOR UNDERGROUNDING OF OVERHEAD UTILITIES BY COYOTE CREEK ESTATES (TRACT 9396)**  
**Action:** ***Authorized** Reimbursement of \$71,769 for Undergrounding of Overhead Utilities by 5M Development LLC.*
8. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2003 QUARTERLY REPORT #3**  
**Action:** ***Accepted** and **Filed** the RDCS Third Quarter Report for 2003.*
9. **BI-ANNUAL VACANCY SURVEY**  
**Action:** *1) **Established** the Bi-Annual Vacancy Rate for October 2003 as Recommended by the Planning Commission.*

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10. **LOCAL LAW ENFORCEMENT BLOCK GRANT 2003**

**Action:** 1) **Authorized** the City Manager to Accept the Local Law Enforcement Block Grant (LLEBG) in the Amount of \$7,505; 2) **Accepted** the Spending Plan as Presented; and 3) **Appropriated** \$834 in Unallocated Reserves as Grant Matching Funds.

11. **SUBDIVISION AMENDMENT APPLICATION SDA-01-11: COCHRANE-MISSION VIEW**

**Action:** **Took No Action**, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.

12. **SUBDIVISION, SD-03-08: WATSONVILLE-SOUTH COUNTY HOUSING**

Council Member Tate said that the City is hearing that this project has to move forward because the Council is mandating that this subdivision move forward. He indicated that the subdivision has not been in front of the Council to mandate. The Council gave direction to staff to look at the highest possible density. Now, the Council is hearing that there are many modifications that need to be made that require several variances from the City's ordinances. He stated that there is indication that the Council needs to take a look at the subdivision and have discussions on what the various issues are to make sure that the Council is still comfortable with the housing project. He did not believe that the Council has given anyone direction to move forward with a teacher housing no matter the obstacles. He requested the opportunity to discuss the issues in order to consider alternatives to address the issues.

Council Member Carr agreed that the Council needs to review the proposed housing development. He suggested that the subdivision be reagendaized but not necessarily for the public hearing being recommended to take place in February. He recommended that the subdivision be agendaized in December so that the Council can discuss what the project is and how it works with the ordinances in places. He noted that the Planning Commission did not take a position on this subdivision. He felt that it was incumbent upon the Council to spend more time on this project and understand it adequately.

Director of Community Development Bischoff indicated said that the appropriate action to take would be to schedule this item for a public hearing. Staff could notify the public that no action is intended or anticipated. He recommended that the Council schedule this item for a public hearing either on December 3 or December 17.

**Action:** On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Scheduled** this item for a December 3, 2003 Public Hearing.

13. **URBAN LIMIT LINE (GREENBELT) STUDY STATUS REPORT**

Mayor Pro Tempore Chang said that discussions on the urban limit line (ULL) have become interesting. She said that a compensation issue was hotly debated. She felt that if the City does not narrow this down and move forward, the City will experience problems. She said that the issue is the future

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implementation study relating to compensation. It was her belief that the Urban Limit Line Committee may need to come back to the Council and request staff and funding to try to finish this report.

Council Member Carr inquired when it is expected that the report will return to the Council.

Director of Community Development Bischoff said that another status report will be brought back to the Council once the committee has concluded its initial recommendations. He said that the committee has given some preliminary indication where they believe the urban limit line should be located to the north, east and west, as well as areas that would be included within a greenbelt. However, it is the southern area that seems to be somewhat problematic. The issue of compensation or the implementation of the greenbelt is something that has generated a lot of interest on the part of committee members. He indicated that the committee received a presentation at the last meeting by an expert on these kinds of issues and that there will be a follow-up meeting to be held on Monday. He said that the scope of work for this project assumed that the City would be able to identify the types of tools that could be used for implementing the greenbelt but that the scope of work did not anticipate that the City would actually develop an implementation plan which would identify tools to be used and priorities for acquisition; including determination of compensation. If this is something the Council would like the committee to undertake, staff would need to return to the Council with a request for additional funding. He expects that this would occur as part of the next status report in January 2004 that will include preliminary recommendations. He said that staff would like to have a discussion with the Council to make sure that it is comfortable with the direction that this is taking before going public and receiving public input.

Mayor Kennedy opened the floor to public comment.

Mark Grzan expressed concern with the direction the urban limit line committee is taking and its make up. He noted that many members of the committee are property owners and that decisions being made by this committee are impacted by the financial interests of the individual members. He said that discussions by the committee address compensating property owners; specifically compensating members on this committee. He did not believe that the City was heading in the right direction and was moving with self interests in mind as opposed to having the public's interest at heart. At one meeting, one member of the committee convinced the committee that the urban limit line should go around his property. Although this recommendation was approved, he felt that it was a conflict of interest that he was on the committee and made the recommendation. It was his hope that the committee would look at what would be the appropriate urban limit line for the community regardless of compensation and impacts. He felt that it should be based upon ecological, geographical, hazard, and community needs. He said that discussions have been about compensation and that compensation is leading the direction to where the line is being drawn. There was some discussion about having a building on a 20% slope line which exceeds the slope line set for the City of San Jose at 15%. He felt that this recommendation was interesting considering the advocacy for Measure P and growth in this community. He would like to believe that this committee and the City enjoys its open space, prides its open space and wants to ensure that open space is preserved for generations to come.

No further comments were offered.



Mayor Kennedy said that while it is true that there are a significant number of property owners on the committee, he felt that the committee has made good progress toward the establishment of an urban limit line around the City that will create a greenbelt. The committee has been successful in this respect and that the committee established principles and policies to preserve a greenbelt. Regarding the southeast quadrant, there are significant questions regarding what to do and how to establish a greenbelt in this area. There is a question as to whether San Martin a sufficient greenbelt. As an alternative, should the City not draw a line in this area and establish policy statements regarding the future of what this area should be, avoiding getting into the difficult question about compensation. He indicated that the committee will be meeting on November 24 in the Madrone Room at the Community Center to discuss this issue, noting that representatives from the Land Trust and the Open Space Authority will be in attendance. He indicated that both of these bodies were successful in acquiring agricultural conservation easements south of Gilroy. The committee is looking at alternatives to preserving open space, greenbelts and agriculture; each of which requires their own separate and distinct mechanism. He stated that this is not an easy process and that not everyone will be happy, but that the committee is making progress.

**Action:**        **No Action Take.**

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

Agency Member Sellers requested that item 15 be removed from the Consent Calendar.

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 14 as follows:*

14.    **OCTOBER 2003 FINANCE & INVESTMENT REPORT – REDEVELOPMENT AGENCY**  
      **Action: Accepted and Filed Report.**
15.    **AMEND AGREEMENT WITH SEIFEL CONSULTING FOR THE PREPARATION OF THE AFFORDABLE HOUSING STRATEGY**

Agency Member Sellers said that the request is to amend a consultant agreement, paying the consultant more for the scope of work. He said that in reading the agreement, staff pointed out that the scope of work was outside their purview but actually within what the consultant agreed to do. He said that part of the compensation being provided was for the preparation and participation at the Agency workshop scheduled for April 2003. He felt that attendance at this workshop was a basic part of what should have been contracted with the consultant. He did not understand why the City was providing additional funding to the consultant for what should have been a part of the original scope of work.

Director of Business Assistance and Housing Services Toy said that staff only envisioned the attendance at one council meeting. Staff did not plan for the extra workshop as it was staff's belief that it would be either a council meeting or a workshop.

**Action:** *On a motion by Agency Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the Executive Director to Amend the Agreement with Seifel Consulting to Increase the Contract Amount by \$7,040 for Additional Services Needed to Prepare the Affordable Housing Strategy, Subject to Agency General Counsel Review.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 16 and 17, as follows:*

**16. ACQUISITION OF THE VALLEY TRANSPORTATION AUTHORITY (VTA) PROPERTY ALONG BUTTERFIELD BOULEVARD**

**Action:** *1) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Execute and Implement, Including Making Minor Revisions to, the Agreement for the Purchase of Property and All Related Documents with the Valley Transportation Authority (VTA), for the Purchase of Their Interest in the Vacant Portion of the Caltrain Lot; 2) **Appropriated** the Amount of \$150,000 From the Current Year Unappropriated Fire Impact fund to Cover the Purchase Price, Related Escrow and Closing Costs, and Schematic Design Costs; 3) **Authorized** the Agency to Convey, and City to Accept, the Full Interest in the Property; and 4) **Authorized** the Executive Director and City Manager, Respectively, to do Everything Necessary to Convey and Accept the Subject Property.*

**17. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF NOVEMBER 5, 2003**

**Action:** ***Approved** the minutes as written.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

**18. APPEAL APPLICATION, AP-03-06: JARVIS-ANRITSU** *(Continued from 11/5/03); and*

**19. APPEAL APPLICATION, AP-03-05: JARVIS-MORGAN HILL DEVELOPMENT PARTNERS**

Mayor Kennedy indicated that there has been a request to consolidate items 18 and 19. He inquired whether there were any objections to this by either appellant.

Andrew Faber, representing Venture Corporation; and Steve Vonderach, representing Anritsu both indicated that they had no objections to consolidating items 18 and 19.

Planning Manager Rowe presented the staff report, indicating that both requests before the City Council are appealing the Planning Commission's approval of a conditional use permit to allow a church to locate in the building at Jarvis Drive, within the Morgan Hill Ranch Business Park. He indicated that the Planning Commission modified the conditions of approval to require that the informal parking agreement with the Anritsu property to the south be formalized as a recorded reciprocal access and shared parking agreement. He stated that under agenda item 18 Anritsu is appealing this condition of approval and not the use permit. Agenda item 19 is an appeal filed by Venture Corporation appealing the more basic question of the use permit as the use is inconsistent with the provisions stipulated in the Business Park's CC&Rs which require that that conditional uses of this nature receive approval from Venture Corporation. He indicated that the City of Morgan Hill is not a party to the CC&Rs and that the use permit is governed by the regulations contained in the zoning codes that allow churches as conditional uses in the light industrial zoning district.

Planning Manager Rowe indicated that the focus of Venture Corporation's appeal deals with the suitability of the use and the site's impact on parking, circulation, traffic, etc. He stated that each of these items are responded to in exhibit B of the staff report. He noted that the Council received a number of correspondences from businesses and property owners within 1,000 feet of the church site. He stated that concerns have been raised that the location of the church in the Business Park would impose possible restrictions on existing businesses to use certain types of hazardous materials. Therefore, objections have been raised by these property owners. He indicated that staff has consulted with the Hazardous Material Specialist with the Santa Clara County Fire Department to inquire whether the church in this vicinity would affect the ability of existing businesses within 1,000 feet to operate as they are currently being operated. The Fire Department representative responded that all operations and uses that are ongoing in the area would not be affected by the fact that the church would locate in this Business Park. Another issue has to do with the 1,000 foot notification requirement and its implication. He stated that City staff consulted with staff at the California Air Resources Board regarding a "sensitive receptor," typically a school. City staff inquired whether a church located within a business park would be considered a sensitive receptor, requiring that businesses within 1,000 feet provide a notification at the time they apply for the use as such things as a diesel generator that would emit diesel emissions. The response was that the church itself is not considered to be a sensitive receptor nor is the daycare component of the church associated with Sunday services. The after school programs proposed includes tutoring students that may not necessarily elevate the church to a sensitive receptor classification. However, staff at the Air Resources Board stated that if the site involved an activity for children K-12 during official school business, including working on homework, they would consider the site to be a school. This use would require businesses within 1,000 feet of the boundary of the site to provide a notice. The use permit for a church would impose an additional step on businesses when they submit an

application for a permit and would require that the applicant notify all property owners within 1,000 feet including a church. He said that this does not mean that businesses would be restricted from doing what they are doing or unable to obtain a permit for which they are applying. It is merely an additional requirement that they provide this notice and that the comments received in response to the notice are taking into consideration by the Air Resources Board staff. He indicated that the Air Resources Board has advised City staff that in no instance do they recall that they did not approve a permit or modified a permit in response to the public notice requirement. The public notice requirement would: 1) extend the processing time for a permit because of the 30 day requirement; 2) add cost, depending on the number of notices to be mailed out; and 3) can create an expectation by the recipients of the notices that they may be able to affect the outcome of the permit application; resulting in lobbying the council who want to comment in the reverse of the fact that a sensitive receptor would unduly burden them.

Planning Manager Rowe informed the Council that staff has concluded that contrary to what may be indicated that businesses involved would be inconvenienced and would incur some expense and delay, they would not be precluded from expanding operations and incorporating the use of additional hazardous materials whether the church is there or not. He pointed out that there is already a portion of the Business Park that is within 1,000 feet of a sensitive receptor site, Central High School located on Monterey Road. As properties develop within 1,000 feet from Central High School and apply for permits, they would have the noticing requirement as they would be within 1,000 feet from the high school. Therefore, a portion of the Business Park is already impacted by the noticing requirement. He recommended that the Council consider item 19, Venture Corporation's appeal first because it deals with the more basic question. Should the Council elect to grant this appeal, which would overturn the Planning Commission's approval of the use permit, item 18 would be a mute point because there would be no use permit. Therefore, it would not be necessary for Anritsu to appeal the one condition. Should the Council choose to uphold the Planning Commission's approval of the use permit, the matter of Anritsu's condition as to the recording of a reciprocal access and parking agreement would need to be considered. If the Council elects to uphold the Planning Commission's approval and conditions, staff recommends that it be allowed to return with a resolution incorporating the appropriate findings. He said that with the informal agreement, staff recommended that in addition to the use of the Anritsu property to the south, that the Church also secures other parking agreements on other properties as a backup. He stated that this requirement is still a part of the Planning Commission's approval, but would not be necessary if there is a recorded agreement that guarantees the church's continued access to the property to the south. He recommended the added requirement for additional offsite parking agreements that would not be recorded be imposed if the conditions are upheld. In the actions with respect to the denial of the use permit, staff recommends that the resolution come back to the Council at its next meeting so that staff can incorporate findings for Council consideration.

In response to Council Member Sellers' question relating to the California Air Resources Board requirement relating to a sensitive receptor site noticing requirement, Planning Manager Rowe indicated that new businesses are purchasing within the condominiums. Staff has not observed that the existence of Central High School within 1,000 feet has impacted businesses from locating into the Business Park.

Mayor Kennedy addressed the process to be used this evening on the appeal hearings, indicating that each appellant would be given a 10 minute representation. The applicant would also be given 10 minutes to make their presentation. The hearing participants would be limited to 3 minutes and the appellants and applicant would be given up to 5 minutes for rebuttals.

Mayor Kennedy opened the public hearing.

Andrew Faber indicated that he represents Morgan Hill Development Partners. He said that he is appealing the granting of the use permit. He said that he did not believe that the Planning Commission could make the findings that they made. One of the findings the City's code requires is that the granting of the use will not impair the utility or value of property of other persons located in the vicinity of the site. He noted that Section 18.54.050 of the Zoning Ordinance lists findings that need to be made by the Planning Commission for conditional uses. He stated that this is a required finding in order to grant a use permit. He submitted that the Council will receive a lot of evidence that this finding cannot be made because the use of a church in an industrial park will impair the utility and the value of other properties in the neighborhood. In the appeal, a number of issues were raised including process issues related to the adoption of the negative declaration which is believed to be flawed. He addressed parking and the impairment of the use to adjacent properties because of the hazardous material restrictions. He stated that the parking, originally proposed by the church, was not appropriate. He noted that the site is severely under parked for a church use. Church representatives state that they have agreements with local tenants such as with the Gold's Gym. However, he did not believe that these agreements were binding or enforceable long term. He felt that parking agreements would need to last as long as the use was in place as parking would spill over onto the street. He referred to an instance in San Jose where he had a client that needed additional parking. The City of San Jose stated that the use needed to have a recorded parking easement on the property and that the City had to be named as a beneficiary of the easement as well. He indicated that the City of Los Gatos required a parking easement for the bocce ball facility. The purpose is such that a parking easement would be permanent and would not be something that can be torn up by mutual consent. A recorded easement would require city involvement in the process. If the Council allows the use permit to stand, he requested that the Council strengthen the parking requirements in one of the methods he mentioned. If a use permit is allowed for the church, parking will spill over and will become a problem. He noted that this is an industrial area and that businesses are allowed to use hazardous materials. He said that staff mentions that a daycare component is not a sensitive receptor as the church has stated that there is no daycare component. He noted that a daycare is prohibited by the City's zoning ordinance. Therefore, the church has called their after school activities a "school." The Council has heard that a school is a sensitive receptor. If a school is established, businesses will have to notify the church and every parent that a business is about to install a use that emits fumes that are known by the State of California to be toxic and detrimental to human health. He said that a permit will not be easy to obtain because parents may lobby agencies and the Council against the use where hazardous materials will be used. This will have an impact on the use and value of the properties. He said that businesses change, and new businesses come in with the need for new materials. He submitted that the Council could not make the proper findings to grant the use permit.

Rob Eves stated that he received copies of two letters from property owners in the area that came in too late this afternoon in opposition of the use. He distributed these letters for the record. He stated that a few months ago he was approached by the broker representing the church. He reviewed the proposal presented to him and immediately advised the broker that Morgan Hill Ranch/Morgan Hill Development Partners would have to oppose the conversion of the Anritsu property into a church because the use would violate the CC&Rs in affect at Morgan Hill Ranch. He indicated that he is the property owner immediately adjacent to the property that would be converted to a church and that he is also the declarent in the CC&Rs for Morgan Hill Ranch Business Park. Therefore, he represents the various properties that are located in Morgan Hill Ranch. He learned that the church entered into a temporary parking arrangement with nearby tenants and that he learned that when these tenants leave one day, the temporary parking agreement would go away. He advised the church that permanent parking would be critical to the use of a church in the area. The church then asked Anritsu if they would record a permanent parking easement on the adjacent property owned by Anritsu. He stated that Anritsu refused to provide the paring in permanence because it would dramatically decrease the value of their property. He offered to sell his property located next door to the church significantly below the appraised value of the property in attempt to solve their problem. The sale would be contingent upon the approval of various property owners in the Morgan Hill Ranch area. He stated that two days before the Planning Commission meeting he learned about the hazardous material problem being addressed this evening. He felt that companies within 1,000 feet of the use may have problems using hazardous materials in their routine manufacturing operations. It was his belief that this could have a devastating affect on property values in the area. He indicated that he worked hard to try and find a solution for the church. However, whatever the solution, it would require the approval of the other property owners. He indicated that he spoke with other property owners within the last few days and learned that they were not contacted by the City, the church nor Anritsu to explain the nature of the problem and to point out that their property values could severely suffer as a result of the use. As a property owner at Morgan Hill Ranch and as a representative of the Morgan Hill Ranch Association/property owners' association, he opposed the use and requested that it be denied.

Steve Vonderach, general counsel for Anritsu, stated that it has been pointed out earlier that the basis for the appeal filed by Anritsu was extremely limited in nature and that they did not find any fault or problem in staff's work in making their recommendation to the Planning Commission. He stated that Anritsu did not have any problems with the conditional use permit but that his problem was with the condition that would require a parking agreement should there be a shortfall in parking. While it is true that Anristu did not contact property owners, he said that church representatives contacted adjacent property owners, noting that no one attended the Planning Commission meeting. If you look around where churches are locating, they are locating in industrial parks. He said that when he started the process of the sale with church representatives, he also met with City staff. It was stated that parking agreements would be acceptable and that the church did need not have to record a parking easement. He felt that it was a matter of fairness in being treated as the City treats others.

Andre Walewski, speaking on behalf of Anritsu and a property owner, indicated that churches are locating in industrial areas around the valley. He said that the applicant is located west of the Edenvale Business Park. He said that the church use has not hindered the value of properties in that area. He

addressed the Council as a property owner in this area, indicating that a solution to the parking problem is for the Council to state that the church would be required to provide parking at all times. He said that churches in other areas try to find/provide parking. He stated that recording a parking easement hinders the value of properties as the easement will be on the property in perpetuity.

Jeff Barnes, Colliers International, requested that Mr. Eves address notification of tenants/owners of industrial areas within 1,000 feet of schools. He did not believe that objections to churches in industrial areas was an issue.

Mr. Vonderach stated that Anritsu would not be opposed to having the Council apply a condition that would stipulate that the Church is to have adequate arrangements for parking. His objection is to providing this parking agreement via an easement. He requested that the Council take into account that there is adjacent land available for parking that is owned by Anritsu that can be used for parking.

Chris Twardus, Colliers International, representing Generations Foursquare Church and resident of Morgan Hill, stated that the church wants to be a friendly neighbor to everyone, especially toward Venture Corporation. He stated that he supports Anritsu's appeal of not requiring a parking easement to be recorded over their property. He addressed the parking issue and their work with other industrial park neighbors. With respect to the parking issue, he said that they were advised by staff to talk to the adjacent property owners to try and secure parking agreements. It came to their attention that there would be speculation that the church would grow to a size that would require additional parking. He informed the Council that sufficient parking exists for the church as proposed today. He did not know of any other church that was required to record a parking easement and that it is difficult to secure this kind of an agreement. He said that he has tried to do everything possible to mitigate this issue. If the church grows to a significant size, he has the option of purchasing the adjacent parcel in order to provide adequate parking. He would agree to state that he would provide the parking spaces dictated. He addressed working with the neighbors, owners and tenants. He spoke to neighbors, owners and tenants within 300-feet to advise them that a church was being proposed in the area; indicating that he went beyond the 300-foot notification requirement. He stated that he spoke to the neighbors within 300 feet of the area and discussed shared parking. Every owner and tenant has welcomed a church into other neighborhoods. He indicated that he wrote letters to property owners and invited them to a brunch to advise them that a church wanted to locate in this business park; indicating and that no one showed up. He noted that no one appeared before the Planning Commission to oppose the use. He identified other churches located within business parks that have experienced no problems associated with a church. He stated that a church did not affect the sale or value of properties in other locations. He requested that the Council consider his opinion on this matter. He stated that if the church is unable to show proof of parking availability, the Council has the ability to review the use permit. He informed the Council that Mr. Eves gave the church the ability to purchase a two-acre site but that the church did not have the money to purchase the property. This was another step that the church took to try and solve the parking issue. He indicated that the church does not have money to purchase additional land for parking. He said that the church would have an interest in purchasing property, as needed, in the future. He indicated that a daycare program is not being proposed. The Church hopes to have an after school

program in the future, but that it is not proposing one at this time. He indicated that he has never heard of a church being required to secure a recorded easement for parking.

In response to Mayor Pro Tempore Chang's question, Mr. Twardus indicated that he could not stipulate to the prohibition of an after school program as the church would like to have the ability to have one in the future.

Martin Guitierrez, BMP Metal, 740 Jarvis Drive, informed the Council that he has a businesses located less than 500 feet of the church property. He stated that he did not have anything against the church but that he did not believe that it would be safe to have individuals around his business. He did not want to have a fence installed around his property but that he may be required to do so to prevent church goers from parking on his property.

Charles Robidart, Jr., Robidart & Associates Inc, 18430 Technology Drive, indicated that he sent a letter to the Council. He stated that his business is high tech communications. He addressed his strong objections to the incompatibility of a church in the Morgan Hill Ranch Business Park. If approved, the church would have a detrimental impact on his property and devalue his property. He did not believe that the problem has been adequately resolved. He was surprised to hear that the seller of the church building does not want to grant an easement. He said that hazardous materials can be stored in businesses as long as it is done by law. The introduction of a church would prevent the reuse of the building by another tenant due to filings that need to be made. The restriction of an industrial use caused by the church will impact his ability to sell his property. As a property owner, he did not believe that he should be made to forfeit his investment in Morgan Hill.

Donald Dunn, Fastener Service Corporation, 700 Jarvis Drive, stated his opposition to the church, indicating that he moved his business to Morgan Hill in 1996. One reason he left San Jose was attributed to the fact that a church was located across the street from his business and that church patrons parked on his property. Prior to relocating to the Morgan Hill Ranch, he inquired whether a church or school would be allowed to locate in the park. He was advised that the CC&Rs precluded a church from locating in the business park. When he built his building, he was required to purchase additional land for parking. He did not believe that a business that has a need to use hazardous material would be interested in relocating to the business park. He indicated that he has not been able to lease a portion of his building. He felt that there would be a problem if the church is allowed to locate in the industrial park.

Barbara Ortega, Abbot Laboratory, 755 Jarvis Drive, stated that the City lured Abbot Laboratory to Morgan Hill. Abbot Laboratory relocated to Morgan Hill with the understanding that they would be allowed to grow. She indicated that Abbot Laboratory likes to locate where they can plan for expansion and growth. She stated that she would like the church to have the opportunity to come to Morgan Hill. However, the church in the industrial park would be detrimental, especially if directly located adjacent to Abbot Laboratory. She said that any perceived threat of a school or day care would hamper their ability to grow as it would not matter who came first. A church in an industrial park would add ramifications to environmental applications. If the church is unable to meet the conditions of the use



permit, she felt that the use permit should be rescinded. This would allow the church to use the funds to purchase another site in Morgan Hill.

Darrold Fry, 610 Jarvis Drive, indicated that he owns property within 300 feet of the church. He stated that he was never approached by church representatives and that he was not invited to a brunch. Therefore, there was no advance notice of a proposed church in the business park. He felt that there was a congruency with a church and an industrial park. He stated that he built a class “A” office and that he is dependent upon the internet. He would be required to purchase a generator to provide back up energy and that he would be seeking a permit for a generator in the future. Should a church be allowed to move in, he would have to face the entire congregation and advise them that he would be using a diesel generator, affecting his ability to proceed with a generator. A church in the vicinity would also impact his property value. He did not believe that a church should be allowed to locate in the industrial park. He indicated that the City requires that all businesses provide adequate parking. He did not know why a church would be allowed to locate in the business park when it is expressly prohibited in the CC&Rs.

Bob Steinbach, managing partner of three businesses in the Morgan Hill Ranch Business Park, indicated that property values would be impacted if businesses are required to secure additional permits or impact parking in today’s market. He did not believe that there would be an issue when the market improves. He stated that he has a partnership located within 1,000 feet of the church’s application of a conditional use permit.

Ms. Ortega informed the Council that businesses would return to the Council requesting that citations be issued for parking violations if the church is allowed to locate in the business park.

Mr. Faber stated that industrial parks are set up for industrial users. He clarified that industrial users are not opposed to churches, but that they do not like them in industrial areas based on parking issues and safety of the children. If the church is allowed to move forward, he felt that it would affect the integrity of the industrial park. He said that San Jose is concerned about industrial zoned land being used by churches. Churches are welcome to locate in suitable locations but that he did not believe that this was a suitable location. He stated that businesses in a business park use hazardous materials and have a right to do so, including a back up generator. He felt that church goers would object to the use of hazardous materials. He said that there were a lot of impacts associated with a church use in an industrial park; including the control of parking. He felt that the City needs to control parking. The City cannot allow the use with a statement that it has parking as it would cause a problem. He requested that the Council uphold their appeal.

Mr. Vonderach stated that jurisdictions all over the county allow churches in business parks and finds them to be compatible uses, including in Morgan Hill. He said that an attempt has been made to depict church parishioners as renegades. However, no evidence has been presented to this fact or to the disruptive nature at the current location. There has been a lot of talk about hazardous materials. He puts his faith that businesses would not create a problem for adjacent neighbors. He felt that there has been a lot of talk about speculation with no hard evidence presented. He agreed that parking needs to be addressed but requested that it be handled as has been done in the past. He indicated that the building he

is selling to the church is vacant. Traffic studies were conducted at the time the building was constructed based on a use. Having a church use in this vacant building does not show that impacts would be any different from other users. He requested that the church use be treated as others have been treated.

No further comments being offered, the public hearing was closed.

Planning Manager Rowe clarified that Central High School is within 1,000 feet of the Morgan Hill Ranch Business Park and have the requirement to notify the School District when a business applies for a hazardous material/emission permit. He indicated that the Church on the Rock is located in an industrial park on Dunne Avenue. He said that there have been other churches approved in industrial areas in the past. However, they were smaller than the one under discussion. He indicated that no complaints have been received about the Church of the Rock adjacent to an automotive repair shop. He informed the Council that churches are allowed in residential, open space, and light industrial zoning districts. They are not allowed in general industrial or commercial zoning districts.

Council Member Tate stated that it seems that if the hazardous material issue is really an issue, the City could place similar burdens on the church to inform all parents with students coming to the church of the potential for the neighbors to be using hazardous materials. The Council could require the church to take on some of the responsibilities of providing notification. He felt that the issues that have been raised can be resolved. He stated that he would like the church to come into Morgan Hill but that he is overwhelmed by the testimony against the use and the perception on the part of the owners within the Business Park that a church use would not be allowed. The property owners have a true perception that the church use would impact their property values. He did not see the logic in this and perceived it as an emotion. However, property owners believe that this is the case. He was hoping to be able to find a way to make the church use work; making everyone happy and get along. However, he sees that this will be a hard thing to do.

Council Member Sellers disclosed that he spent an hour speaking with Anritsu representatives that continue to feel strongly that they are great neighbors and a great business. He appreciates the fact that Anritsu is located in Morgan Hill and hopes to see their continued growth and expansion. He spent some time, on a phone conversation, with a representative of Venture Corporation this afternoon. He said that both of these conversations/discussions were helpful. However, he felt that the testimony received this evening was significant. He stated that he did not share the concerns raised repeatedly this evening. He felt that some of the parking issues could be mitigated. He expressed concern with adding a use that is different from the uses that exist today and the implications. He felt that the businesses already in place had certain expectations. Had the church been in the Business Park at the beginning, he had no doubt that businesses would locate within the Business Park. He noted that Morgan Hill has the largest business park in Silicon Valley and that it is anticipated that as the economy improves, the City would be in the pathway of growth and progress. He felt that the City needs to make sure that the Business Park is poised in such a way that it is seen as a vital use within the larger community. The City has to be cognizant of anything that might impinge on its ability to create this opportunity/image. He indicated that his wife works at Gold's Gym; therefore, he is familiar with the Business Park, the general

area and the existing uses. As a parent, he expressed concern with having children in the Business Park as the church needs to provide after school activities. He applauded the church for providing an opportunity to engage children after school. However, this would necessitate regular trips by students into an industrial park during regular business hours. In addition, there will be children at the church on a Sunday when other businesses might not expect to see children. He stated that he was inclined, at this point, to concur with the appeal on the part of Venture Corporation.

Mayor Kennedy disclosed that he met with the use permit applicant, Foursquare Church, early in the process. He agreed to work with them to try and find a way to make the use work. He also met with Mr. Vonderach with Anritsu; and with Venture Corporation representatives on several occasions regarding this issue. He stated that it was his hope that there could be a way to make the church use work. It is clear to him that after going through this lengthy review and discussion that the use is not going to work. He felt that there were too many problems with existing major businesses in the community; many moving here with the expectations that they would not have to deal with these kinds of concerns. He stated that he would support the suggestion to agree with the Venture Corporation appeal; granting the appeal and rescinding the conditional use permit granted by the Planning Commission.

Mayor Pro Tempore Chang indicated that it was her belief that Mr. Eves was willing to sell the property up to this point. She recommended that another attempt be made to reach a solution.

Mayor Kennedy stated that it was his belief that the church has been trying to reach a resolution for a significant amount of time (e.g., six months or so). He also facilitated a meeting with Mr. Eves and the Foursquare Church representatives to try to see if they could work out a solution. He indicated that the church did not have enough money to acquire the parcel of land to make it work. In addition, there was a discovery of the hazardous material concern as a new issue raised. He was convinced that the City has gone the extra mile to try to make this use work.

Mayor Pro Tempore Chang felt that the other concerns could be mitigated. She noted that the Church of the Rock is located within an industrial zoning district and that the City has not received complaints relating to the use. She recommended that another attempt be made to resolve the parking issue. She suggested that Mr. Eves lease property to the church.

Council Member Tate agreed with staff that there are insufficient grounds for denying the use permit in this case. The conclusion of granting the appeal seems to be the right course if they cannot be sent to the table to negotiate one more time. He inquired whether the Council can come up with findings to grant the appeal.

City Attorney Leichter indicated that the Council has heard testimony and received more evidence before it than the Planning Commission did. She stated that staff would have to take the resolution back and incorporate explicit findings should the Council determine to grant the appeal.

Council Member Sellers stated that it was obvious that there were significant differences in testimony before the Council than there was before the Planning Commission.

Council Member Carr said that he would be interested in exploring the different mitigations addressed by Mayor Pro Tempore Chang and Council Member Tate. He noted that the church would be buffered by a hotel, retail use and the freeway. Therefore, the church would not be located in the middle of the park. He felt that a property value is a significant issue as business owners had some expectations. Perhaps, individuals could have researched and understood that a religious institutional use is a permitted use in the light industrial zone but that individuals may have had an expectation. If there was a way the City could work on this issue and place the onus about notification being placed on the church instead of the other businesses, this would be worth investigating.

Council Member Tate said that there may be things that can mitigate concerns such as making sure that the homework center does not conflict with commute hours. However, he was not sure if it was worth pursuing given the situation.

Mayor Kennedy reopened the public hearing to hear from applicant.

Mr. Duarte, Generation Foursquare Church, stated that he respects the opinions of the members of the Council, Venture Corporation and the neighbors. He suggested that the church would be flexible in terms of addressing any and all concerns in an attempt to satisfy all parties. He indicated that he has been working a long time on the use permit application and that it was his hope to be successful in establishing a home in Morgan Hill, doing so in a way that the surrounding neighbors and everyone in the community can feel good about it. In terms of the location within this park, it was felt that it was the best location for the church as it is buffered by Highway 101. He noted that a hotel is located on one side of the church and Gold's Gym on the other side. Therefore, he did not believe that the church would be interrupting the business park. Regarding the issue of hazardous material and being considered a sensitive receptor, he felt that this was a pre existing condition by virtue of other uses that could already be sensitive receptors. He noted that there is a retail shopping center that is well within 1,000 feet, a hotel that is being used as residential and Gold's Gym that could be considered sensitive receptors. Therefore, the issue already exists if there is an issue at all. He did not believe that a church coming to the area would make a difference whatsoever. He stated that he would be open to suggestions or ideas that would help reach an agreement that satisfies all parties.

Council Member Sellers inquired as to the appropriate course of action to take in order to proceed. He inquired whether the Council should proceed to deny the application and request that the parties continue to work out issues, or whether the Council should continue the appeal applications if there is an inclination on the part of the Council to try and figure out ways to mitigate the action.

City Attorney Leichter suggested that the Council place the appeal in abeyance for the time being if it believes that it needs more information as to whether the conditions can be mitigated. The Council could refer the matter back to staff to return with information should the Council need information to decide on the appeal.

Mayor Kennedy indicated that he has already attempted to assist in a resolution where all parties would be satisfied with the use.

Council Member Sellers said that had Mayor Kennedy not already undertaken a significant effort, he would have been inclined to continue the matter to try and resolve differences.

Mark Grzan stated that he did not see any quantifiable evidence to deny the use permit for the church as it was his belief that the key issues before the Council can be mitigated. If there were concerns regarding hazardous material, he felt that the Council needs to look into this issue before denying the use permit. He said that if the concerns raised by the property owners were true, the Council is obligated to find out the facts. He stated that the Council needs to have relative information before it. He felt that the decision making process is a bit subjective at this time as he sees no violation of any codes that would deny the applicant of locating a church in the Business Park.

Mr. Eves indicated that he has spent months trying to find a solution for this use. He has looked at selling the adjacent property at a discounted price. He also offered to sell it to the church at 5% interest with no payments for years. He also looked at leasing the property to the church. He has looked at every imaginable prospect to find a solution to work this out. To this date, he has not found one. If he is able to find a solution, it would have to go to the property owners of Morgan Hill Ranch for their approval. He could spend another week, month or six months trying to work through the issues in good faith. However, when he approaches the property owners, they would be as adamantly opposed to the use as they are tonight. He said that despite his best efforts, it would be a fruitless exercise. He indicated that he represents the property owners association as a whole and that he is ethically bound to go to all individuals who have bought and built properties in Morgan Hill Ranch and receive their input.

Mayor Pro Tempore Chang noted that Mr. Eves indicated his willingness to sell property to the church. This must have meant that Mr. Eves agreed with their intention to locate a church in the Business Park.

Mr. Eves stated that after Anritsu declined to record an easement, church representatives approached him to purchase land. He indicated that he was willing to sell, lease, sell it a discounted price, and/or financing the land. The only condition to any agreement would be that the property owners within Morgan Hill Ranch, particularly those within 1,000 feet who will be impacted, would have to be a part of the process. He did not believe that there would be a solution over the course of weeks or months. He said that other property owners do not need to get the Associations approval to sell their property but that sales do not generally have the far reaching implications that this use has. He noted that Mr. Vonderach is requesting the opportunity to have a church go on the property with a temporary parking arrangement. If any other property owner wishes to sell their property, the City of Morgan Hill would impose permanent parking requirements on property owners in the Business Park.

Mr. Faber clarified that the way the CC&Rs work is that if someone wants to put in an allowed use, and permits are not required, no approval is required under the CC&Rs. However, for any conditional uses such as this one that is not allowed as a matter of right and only allowed when the City grants a permit,

these uses require the approval of the declarant under the CC&Rs. He noted that Mr. Eve's company is the declarant. He indicated that he wrote a letter to the City indicating that the City should not hear this matter because it violates the CC&Rs. The City's response was that this was a private matter and does not affect the City's permit process.

City Attorney Leichter agreed that the CC&Rs is not a matter for the City to be concerned about. This is a private document between the private parties.

Robert Kahn, congregant of the Generations Foursquare Church, indicated that he has worked with the Mayor and spoke with some of the Council Members as well as Planning Commissioners. He addressed the issue of the supervisory of the after school program. He indicated that children are always supervised and are not running around. It has been his experience in the 13 years attending this church that the parking situation has been acceptable to businesses as church goers are respectful of the surrounding businesses. The church specifically requests that the church congregants not park in certain spaces and that church congregants are respectful of these wishes. He said that the size of the church requires 1 space per five permanent seats in the auditorium per city code. The church could meet this requirement; however, the build out plan submitted shows a potential congregation of 600 individuals. This is how the church ends up with the under parking situation where it does not have enough space. The church believes that they can attain a collateral parking arrangement with some of the businesses/tenants in the area.

Mayor Kennedy closed the public hearing.

Mayor Pro Tempore Chang felt that if the CC&Rs does not allow the church in the Business Park, the Council is wasting its time and should not be hearing the matter. She requested clarification.

City Attorney Leichter indicated that the CC&Rs are a private contractual matter between the parties. She did not know what Venture Corporation intends to do with regards to enforcement of the CC&Rs. She said that Mayor Pro Tempore Chang may be correct in that this may be a mute question of the use.

Council Member Sellers agreed that the CC&Rs is not an issue for Council discussion but that it is an issue for consideration by the fact that it exists.

Mayor Kennedy did not believe that the CC&Rs are relevant to the appeal.

Mayor Pro Tempore Chang said that she would hear the appeal on the basis of whether there are issues that can or cannot be addressed such as the hazardous material, the school, and parking. She felt that the concerns of the neighbors can be addressed through the CC&Rs and through Mr. Eves.

Mayor Kennedy reopened the public hearing.

Mr. Faber said that under the CC&Rs, the use was declined to be approved and may be enforced by a lawsuit. He said that the issue of the neighbors' complaints are relevant as this is a conditional use. He

referred to one of the findings found in Section 18.54.050.b.3 of the Municipal Code that states that the proposed use at the location requested will not impair the utility or value of property of other persons located in the vicinity of the site. If the Council feels that the use would impair the value or the utility of neighboring property, the Council cannot grant the use permit. Thus, the purpose of all the neighborhood testimony and therefore it is directly relevant to the Council's decision.

The Council took a brief break to allow the City Attorney to consult with staff. The Council reconvened.

Mayor Kennedy said that after consultation with the City Manager and City Attorney, it appears that the Council has three options: 1) grant the appeal; 2) deny the appeal; or 3) to ask the attorneys representing the appellants to prepare written briefs on what their opinions are relative to the CC&Rs.

City Attorney Leichter said that some Council members indicated interest in receiving more information of some of the mitigations that have been discussed. She said that staff would return with findings should the Council wish to grant the appeal consistent with the record. Regarding the CC&Rs, staff would be asking for the attorneys or the appellants to address the effects of the CC&Rs on the Council's decision and how they view whether the Council is bound or influenced either by the language of the CC&Rs or the evidence presented this evening on the CC&Rs.

Mayor Pro Tempore Chang inquired how the Council can grant the appeal when the findings are not before the Council.

Mayor Kennedy indicated that the Council could state that it is its intent to deny the use. Based on the testimony presented this evening, he felt that there was sufficient reason to grant the appeal. However, he would like staff to research this and bring information back to the Council.

City Attorney Leichter said that when staff is requested to return with findings, staff goes back and looks at the record and statements made by Council Members and tries to discern what the collective intent was and draft findings in accordance with what is discerned to be the collective intent as well as the evidence in the record. Staff incorporated this information for Council consideration/adoption.

Council Member Carr indicated that the Council is being asked to provide a ruling on an appeal and not being specifically asked to grant a conditional use permit. He noted that there are specific issues that are being appealed. He referred to page 201 of the agenda packet (page 2 of the Berlinger Cohen letter on behalf of Venture Corporation). He said that it appears that there are six items that are being appealed. These are the issues the Council needs to decide whether it agrees in the appeal that the Planning Commission did not find enough evidence on these. He was not sure whether the Council should be considering anything other than these six items tonight as these are being brought before the Council in this specific appeal. He did not know whether the Council should be considering any other information. In the review of the six items, some of them he agreed with the Planning Commission and some of them he does not feel he has enough information to make a sound decision. He felt that the issue about

property values is a real issue but that it is not contained in the letter of appeal. He stated that he does not have enough specific information to be able to make a decision on this issue.

City Attorney Leichter said that if the Council looks at the first ground of the appeal it states that the Planning Commission found that the project was consistent with the zoning ordinance. As Mr. Faber points out, portions of the zoning ordinance relating to impairing the utility value and value of the adjacent property would fall under the ground of appeal. Therefore, it is properly before the Council this evening.

Mayor Pro Tempore Chang stated that she was not clear about the CC&R portion. If the CC&Rs state that a church is not an allowed use in the Business Park, it is not the Council's job to decide one way or the other, especially when a church is concerned. She said that this is a grey area and that she does not feel comfortable making decisions at this time. She would like to receive additional information and recommended that Mayor Kennedy attempt one more time to reach a solution by all parties.

Council Member Sellers inquired whether there was a need to continue the appeals to receive clarification on the CC&Rs and confirm that it is a mute point. Even when the Council receives clarification on the CC&Rs, it may be that the CC&Rs would preclude the church from proceeding. He inquired how this would impact the decision of the Council and whether the Council still needs to go through the process and grant the appeal.

City Attorney Leichter responded that the Council can always determine to hear the merits of the appeals as they have properly been brought before the Council. She said that the enforcement of the CC&Rs may mute the Council's decision. She said that the CC&Rs may be a practical impact but not a legal impact upon the Council's decision unless she hears something differently from the attorneys for the appellants, indicating that she has not to date.

Mayor Kennedy said that it appears that he and Council Member Sellers are prepared to grant the appeal. He heard Mayor Pro Tempore Chang state that she would like to continue the appeals in order to receive additional information from the attorneys on the CC&Rs and their intent.

Council Member Tate stated that he did not see why the CC&Rs are relevant to the Council's decision. He noted that the Council does not get into homeowners' dispute based on CC&Rs of development. He felt that CC&Rs are irrelevant to zoning and codes.

Mayor Kennedy inquired whether the appellant has the right, under the CC&Rs, to deny the use and mute the issue.

City Attorney Leichter said that based on what has been represented to her that the declarant has the power to deny the use under the CC&Rs, indicating that she has not yet had the opportunity to review the CC&Rs. She stated that the CC&Rs are not legally relevant but that there has been testimony presented this evening about the CC&Rs as to whether the appeal should be granted. She said that they may have a practical impact.



Council Member Sellers said that a reason the Council came to a different conclusion from the Planning Commission is attributed to the fact that the Council heard significant testimony on the part of the adjacent property owners that they have significant objections. It was his understanding from the discussions this evening that the zoning ordinance specifically allows a conditional use permit should there be no significant objections from adjacent property owners. Having heard these objections this evening and the other concerns raised by Council Members, he stated that he was prepared to move forward with the appeals this evening.

**Action:** *Council Member Sellers made a motion, seconded by Mayor Kennedy, to **grant** the appeal for Venture Corporation based on the zoning ordinance and the impact on property values on adjacent properties. Staff **directed** to return with resolution(s) incorporating the appropriate findings.*

Council Member Tate stated that he would be supporting the motion, indicating that he was disappointed in having to do as it is a perception reality issue. He felt that the findings can be made because perception does become reality. He sees a church being compatible in this location but that the neighbors have made it an issue. He stated that he would support the motion because it was his belief that the findings can be made.

Council Member Carr said that this is a difficult issue for everyone. He stated that he would not support the motion as it was his belief that additional information could be gathered. He said that the Council has heard conflicting testimony about the property values. He did not know how to judge property values as he is not a real estate person to be able to judge this. When he views the six items that are being appealed, he agrees with the Planning Commission on at least three of them. He said that he needs more information on a couple of others. Considering that the Council is being asked to overturn a decision that the Planning Commission took, he did not believe that he had enough information to do so. The information may be in the findings when they return but that tonight, he could not support the motion before the Council. He stated that he was disappointed that the Council was not able to find a different resolution or a way to work this out but that he understands why the motion was made.

Council Member Tate clarified that his support is not final until he sees the findings and agrees with them.

Mayor Kennedy requested that an additional finding be included that relates to the potential impact of hazardous materials on property values and the interaction between the applicant's intended use and the affect of chemicals on the use.

Mayor Pro Tempore Chang felt that the Council was being asked to take action which has nothing to do with the Council because of the CC&Rs. If the CC&Rs really apply, she did not believe that the Council should be hearing this matter. She felt that the property owners should have been dealing with this issue a couple of months ago. She did not believe that it was her job to review the appeal based on what she has heard this evening.

**Vote:**            *The motion **carried** 3-2 with Council Member Carr and Mayor Pro Tempore Chang voting no.*

Council Member Sellers inquired whether there was any action that the Council needs to take regarding agenda item 18.

City Attorney Leichter recommended the adoption of a resolution for the Anritsu appeal with the finding that it is a mute case returns to the Council for its consideration.

## ***City Council Action***

### **OTHER BUSINESS:**

Mayor Kennedy recommended that item 24 be considered at this time as it would be a short item to consider.

#### **24.    REQUEST FROM THE MORGAN HILL BRANCH OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW) TO WAIVE SPECIAL EVENT PERMIT FEES**

City Manager Tewes indicated that since this item appeared on the agenda, he has spoken with individuals in the community who are supportive of the purposes of the AAUW and indicated a willingness to contribute the funds to pay for the special event permit so that tax payers would not have to make this contribution.

**Action:**            **No Action Taken.**

#### **20.    UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P) (Continued from November 11, 2003) – Resolution Nos. 5736, 5737, & 5738**

Director of Community Development Bischoff presented the staff report. He addressed the issue of the Arcadia property relating to development of property in relationship to the City's urban service area between March 1, 1990 and the effective date of Measure P, December 8, 1990. He said that Measure P restricts the density provided for in the County's general plan in place on March 1, 1990. This clause has the effect of precluding any further development of the 80 acre parcel as it received 21 allocations under Measure E on 10 acres of the 80 acre site. Therefore, there are an additional 70 acres that are undeveloped and cannot be developed based on the clause under Measure P. He indicated that this clause is proposed to the year 2020. He indicated that on November 11, 2003, the Council gave the attorney representing Arcadia development the opportunity to submit his case in writing that would substantiate the reasons why he felt that this was improper and should be changed by the City Council. He indicated that the Council has before it what is hoped to be the final version of the RDCS update and includes the changes the Council requested with respect to appeals such that the Council can hear all

appeals of scoring and that the Planning Commission would make the final award of allocation for projects. Staff also updated dates, noting that the earlier RDCS updates had an effective date before which all lands were designated as open space and that the general plan would have to be extended to the year 2020. Staff took the opportunity to update this date in order to be consistent throughout the document and consistent with its adoption date. With respect to the issue of Arcadia, he informed the Council that staff has included attachment 1 to the agenda packet that suggests different alternatives for Council consideration should it decide that it is interested in alternative language. He informed the Council that the resolution calling for the election and the resolution which calls for the written ballot language have different language. It was staff's intent that the language shown in the third resolution (page 291) would be the language that would be on the ballot. He recommended that the Council direct staff to change the ballot language as it is shown on the resolution that calls for the special election (changing the ballot language of resolution found on page 260 to be the same as the language shown on the third resolution found on page 291).

Council Member Sellers inquired whether the population needs to be identified in the ballot language. If not, he recommended that the population number of "48,000" be deleted. He felt that the population number is misleading because it talks about what will happen at the end and not the fact that there is a long way to go between now and 2020.

City Attorney Leichter responded that the elections code requires that the ballot language be in this form but that the question included in the ballot measure is up to the discretion of the Council as long as it sufficiently identifies the measure to be adopted. She felt that the test would be whether the elimination of the population number of 48,000 is sufficient to inform the voters of the substance of the measure.

Mayor Kennedy opened the floor to public comment.

Bart Hechtman, representing Arcadia Developed, thanked the Council for continuing this item from the November 11 meeting to allow him the opportunity to provide the Council with an explanation of the legal reasons why it should put forth to the voters an amendment to Measure P that eliminates this unfair treatment to Arcadia. He understood that City Attorney Leichter discussed the legal analysis in closed session and that he did not believe that there was any purpose to talk more about the law at this point. He addressed a more basic issue and that was the issue of fairness. He stated that in December 1990, when Measure P passed, there were approximately 1,570 acres of residentially designated vacant land within the City's urban service area. Over the past 13 years, 1,500 of these acres have had the right and ability to compete for Measure P allotment. He noted that only one parcel (70 acre parcel) has been excluded from this process. This is the property that is the subject of his letter and the subject of his request. He said that there is nothing physical that distinguishes this property from any of the other 1,500 acres. It was his belief that Arcadia has been treated unfairly for the past 13 years. He stated that he was not present to ask the Council to remedy the past or be given special treatment going forward. He is asking the Council to eliminate the unfairness going forward so that this property is treated like all other vacant residentially designated property within the City's urban service area. He said that the process designed within Measure P is in recognition of the limited number of housing allotments and how to fairly distribute these among the people who want to build homes. He indicated that Arcadia

wants to be a part of this process. He focused his comments on the three alternatives drafted by staff found on page 251 of attachment 1. Alternative A, as recommended by the Committee, would continue this unfair treatment in place until the year 2020. He felt that as long as Measure P and the clause exist, the Arcadia parcel would not be able to compete. He felt that at some point, the Council would be annexing other properties to compete under Measure P and get to the City's five-year supply of residential housing. Under alternative A, the Arcadia property would not be able to compete and that the city would be freezing development for a minimum of 17 years. He did not believe that this was fair. Under the alternative C scenario, the property is frozen for another 7 years. He said that the City has approximately 1,000 acres of vacant residential land within the urban service area plus these 70 acres. These indistinguishable 1,000 acres can continue to compete while Arcadia would not be able to compete for another 7 years. He did not believe that this was fair. He stated that the essence of what he was trying to accomplish can be found in alternative B. The clause would be eliminated which only applies to a single parcel that was not trying to rush in to get into the urban service area. It was a process of circumstances of submitting an application to get into the urban service area submitted in 1987 that took three years to get included into the City's urban service area, approved on March 19, 1990. He did not believe that sound planning should be based on three coincidences. As it turned out, this is the only property to which this provision applies. He requested that the Council allow the voters to eliminate the condition and provide the property owner with the ability to compete like everyone else.

Chuck Dillmann said that he read the staff report and the draft RDCS text. While there have been various efforts and task forces, he did not believe that they have been integrated. He understood that Measure P, as amended, would increase downtown residential development. He was amazed that this came from the Downtown Task Force thinking that it would improve business. He felt that if the City really wants to improve business in the downtown, the City would need to approve high rise apartments. If the City wants to improve downtown businesses without having to build high rise apartments, the City will need to improve the access to downtown and parking. He did not believe that adding more residential will significantly help the downtown businesses. He also felt that the 48,000 population seems to be a circular argument because in several meetings of the City Council, it was stated that the 48,000 was based on the general plan. However, it was his belief that the General Plan Task Force included the 48,000 population based on the assumption that Measure P would be extended. He noted that desirable infill carried over from the original Measure P. He noted that property can be taken into the City if it is considered to be desirable infill but that it does not give you the criteria for being desirable. Also, property has to be contiguous on two sides. He said that a piece of property that is separated by five feet might be more desirable but could not be taken in. If Measure P is extended, there would be a 30-year supply of property in the City. Therefore, he did not see a need for including additional property. He indicated that a long time ago he addressed the septic systems along Holiday Lakes. Mr. Bischoff informed him that Measure P precluded the City from doing anything about the septic systems. He felt that this problem should be dealt with as part of this amendment. He felt that it was time for the City to look at the whole picture as an integrated plan.

Ralph Lyle informed the Council that he was in attendance to answer questions. He indicated that he is supportive of the initiative now that there is a change back on the allotment process. He addressed the issue relating to the Arcadia project. He noted that Mr. Hechtman states that if the paragraph were

eliminated, they would gain seven years. He clarified that there would be a gain of four years because all of the allotments through 2005-06 are committed or will be committed by the RDCS language. The earliest that Arcadia would be able to receive allotments would be 2006-07, even if the paragraph was eliminated.

Randall Curtis said that in all fairness, it would be fair to extend proposition P as written without amending the paragraph as Arcadia has been playing dirty pool since its inception. He felt that it was a fraudulent statement for Arcadia to state that they are the only ones singled out. He said that other property owners abided by the rule as written and did not apply for urban service area inclusion. He noted that Arcadia has had 18 months to come forward with their comments. He felt that this is another scheme of Arcadia to wait to the last minute when the City has gone through and agreed to move forward with a ballot measure. Now, Arcadia is trying to throw a wrench into the works. He did not believe that Arcadia was playing fairly from the inception of Measure P. He urged the Council to proceed with the ballot measure as written. He noted that Arcadia has already contested this issue and lost. Therefore, he did not believe that they could raise this issue again in court. He stated that he would not be able to support the extension of Measure P if the Council amends the text relating to Arcadia, indicating that there were another several hundred individuals who would not support the ballot measure without the paragraph relating to Arcadia.

Dick Oliver indicated that as a member of the Measure P Update Committee, he felt that using the population figure of 48,000 would be appropriate because it lends a certainty to individuals who will be asked to vote on the initiative. If the number is eliminated, individuals may feel that they could change the general plan in the period of time and change the population figures. Thus, the reason for including the 48,000 population figure.

No further comments were offered.

Council Member Tate indicated that the Council Measure P Update representatives were still advocating on behalf of the Measure P Update Committee's recommendation.

Council Member Carr concurred and that he was pleased that at the last meeting, the Council did not change the appeal process. He noted that Mr. Dillmann talked about the securitious nature of some of the things contained in the initiative. He felt that the initiative was the result of the culmination of a lot of the things that come together. He said that when he first ran for Council, there was a lot of discussion about bringing different plans together. As a member of the General Plan Update Task Force, he was amazed about the many different plans that were not in sync with each other. He felt that the City Council has taken a good look at the downtown update and the housing element, tying these elements together and making them match up to the general plan for the first time. He felt that the initiative is bringing a lot of the plans and objectives for the city and tying them together, making them reflect what is contained in the general plan. He stated that this is good, smart and right way to plan. He recommended that the Council pass the initiative as presented this evening.

Council Member Tate indicated that the septic system would be taken care of as part of this ballot measure. He stated that should the entire Holiday Lake Unit I choose to be annexed; they can be annexed as part of this initiative.

Council Member Sellers felt that for clarity sake, he would support retaining the population number of 48,000. However, it would be helpful to focus voters on the content and what the City is trying to do and not getting hung up on a specific number.

City Attorney Leichter clarified that the motions were subject to the changes suggested by Mr. Bischoff that the ballot language be consistent.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5736, Calling for a Special Municipal Election on the March 2, 2004 Ballot, amending the ballot measure language to be consistent with that contained in Resolution No. 5738.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5737, Requesting County Consolidation of Elections.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5738, Setting Priorities for Written Arguments and Directing the City Attorney to Prepare an Impartial Analysis, as recommended by staff.*

**21. REIMBURSEMENT OF THE APPEAL APPLICATION FEE FOR THE SANTA CLARA VALLEY AUDUBON SOCIETY AND COMMITTEE FOR GREEN FOOTHILLS**

Mayor Kennedy indicated that there has been a request to continue this item.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Continued** this item to December 3, 2003.*

**22. INTERIM DOG PARK**

Deputy Public Works Director Struve presented the staff report. He requested that the Council consider approval of further pursuing an agreement with PG&E for an interim dog park. He indicated that staff would return to the Council with a formal agreement, including any costs associated with the creation of such an agreement. He noted that there is no funding for this project. Therefore, he requested that the Council direct staff to look for potential funding with the 2004-05 budget through grant sources or fundraising efforts that the dog owners would agree to. He indicated that the Parks and Recreation Commission discussed costs associated with an interim dog park. He stated that sewer would not be needed if restrooms were not built on site. As this would be an interim use, there is thought that a

restroom would not be constructed on site. He indicated that installation of sewer was costly because the only sewer main available is located on Peak Avenue and not down Noble Court. If the City did not have to bare the cost of bringing sewer to the property, it would reduce the cost of the project. There would also be a reduction in cost if the City installs decomposed granite instead of turf and irrigation.

Mayor Kennedy opened the floor to public comment.

Peggy Young indicated that she is a dog owner/breeder, Gavilan Kennel Club member, and a Santa Clara County animal control veterinarian. She felt that there seems to be some sort of feeling that a dog park may be down on the list of recreational needs. She said that the reality is that there is a need for a dog park where dog owners can exercise their dogs off leash. She noted that there is no place legally that dog owners can have dogs off leash. She felt that the City can provide a facility without spending a lot of money. She indicated that there has been talk about inherent liabilities, dog bites and injuries. She advocated that a purpose park may limit this as far as the number of individuals who would be exposed. She noted that there is a potential liability injury to any sports facility. She did not believe that this should be a major consideration. She indicated that she would be happy to help with any fundraising efforts, if necessary. She informed the Council that dog owners police other people coming into an area and help prevent dog attacks. She said that there is no way to prevent dog attacks in dog parks and it also happens with dogs walking on the street.

Mark Grzan indicated that as a parks and recreation commission for the City of Sunnyvale and a member of staff, he was very much a part of the construction of the Los Palmas Dog Park. He cautioned the Council that a dog park does require maintenance. The City will find that dog parks coming forward are adjoining well known recreational facilities. He said that all city facilities will require maintenance. He felt that if all facilities were adjoining, there would be joint access and maintenance. He noted that dogs will need water. He said that you cannot take any vacant lot and make it into a dog park without putting some investment into it. He recommended that the Council consider joint construction of the dog park with other types of recreational facilities and maximize the use of both facilities.

Janet Kowaniec stated that she is a firm believer of a dog park as dogs need a place to run and exercise in order to be totally fit. She said that there is a perception that dog parks are for dogs but felt that they are for people too. She indicated that dog supporters are not asking for restrooms as it was felt that it was asking too much, noting that the parks that dogs are being taken to at this time do not have restrooms. With regards to a drinking fountain, it is being proposed that a spigot for water be installed as it would be sufficient to provide dogs with drinking water.

Gloria Zufall requested that the Council approve the pursuit of the PG&E site for a temporary dog park in order to give her dog a place to play. She indicated that she looked at the internet to see what was taking place with dog parks and that she was amazed as to what was taking place in the United States and the world with regards to dog parks. She said that some cities are using a dog park as an encouragement to have individuals move to that city.

No further comments were offered.

Council Member Sellers offered some cautionary notes. He said that resources are limited for the construction and maintenance of a dog park. He said that sites adjacent to parks have problems associated with them. He felt that the PG&E site was the best site for an interim dog park. He said that the generosity of citizens of Morgan Hill has been seen in the past. He felt that there were resources available and individuals willing to bring them together both financial and materially. He encouraged staff to pursue this funding alternative. He stated that he will be meeting with representatives from PG&E and that he would do what he can to impress upon them the value of this problem to see what they can do with this project. He encouraged staff and citizens to be creative in putting this dog park together. He stated that he was supportive of the interim dog park as it is a needed asset for the community.

Council Member Tate knows that there is a huge demand for a dog park, indicating that the park located at the north end of Holiday Lake Estates is used by dogs/owners. He noticed that a lot of people from the valley drive up to use this park every day. He said that the perk ponds had a \$65,000 budget that the City managed to find. He noted that the Parks & Recreation Commission felt that an interim dog park could be constructed at a low cost. He said that the City may ask citizens to help it look for grants and raise some of the funds and felt that this can be done with the determination shown by dog owners. He stated his support of the interim dog park.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Parks and Recreation Commission Recommendation to Pursue Development of an Agreement with Pacific Gas and Electric (PG&E) to Develop an Interim Off-leash Dog Park on PG&E Property in Morgan Hill as Identified in Staff Report; and **Directed** Staff to Include Consideration for Funding an Off-Leash Interim Dog Park as a Part of the Capital Improvement Budget Preparations for Fiscal Year 2004-2005.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **agreed** to extend the meeting curfew by 30 minutes.*

**23.    LIBRARY COMMISSION RECOMMENDATION REGARDING CYCLE III APPLICATION FOR LIBRARY BOND ACT OF 2000 GRANT**

Recreation and Community Services Manager Spier presented the staff report, indicating that staff is recommending that the Council library subcommittee review the recommendations from the Library Commission that Morgan Hill not apply for Cycle III of the Library Bond Act of 2000 that is due January 16, 2004.

Council Member Tate said that there have been a lot of things that have taken place in the last week or so, including a library commission meeting. He said that the City had not yet received feedback from a State-wide library convention that took place in Southern California. He indicated that Sara Flowers, Melinda Cervantes, and Chris Noll attended this convention. The feedback from this convention is that



there are two bills being proposed by senator/legislators. It is being proposed that  $\frac{1}{2}$  of the money that goes into a proposed bond would be awarded to agencies that participate in the third round of applications. He noted that there was a lot of discussion from the library commission whether the City can complete an application to submit for the third round application by January 16, 2004. He felt that it could be done. He said that City's needs assessment has expired and that the City would need to prepare another needs assessment. He said that the Council Library has stated that they would support preparing another needs assessment and would help oversee the completion of the needs assessment. The County Library is recommending that there be documentation of the results of the needs assessment and that it is incorporated into the City's plan of service. The City could go to its consultant, Critical Solutions, to request that they rewrite this part of the application. If this is an action the Council wants to pursue, it is a decision that needs to be made soon as the application is due by January 16, 2004. He noted that this is new information that the library commission did not have in terms of what could happen with the bond act. He indicated that it is the recommendation of County library staff that the City submit for round three based on the possibility of these bond funds being made available. He said that the City's joint use agreement with the School District was found to be weak and that maybe its time to change it. He felt that there is consideration of applying for the third round because of what it can do if additional bond monies come forward. He recommended that the Council library committee and the library commissioners assigned to this issue get together as soon as possible to take a harder look at a third round bond application.

Mayor Kennedy opened the floor to public comment.

Chuck Dillmann felt that the only chance of receiving a grant was getting it in the first round of applications. The reason the City had a chance then was attributed to the fact that many of the competitors were not organized in the first round. The City was not successful because the application had a couple of areas of weaknesses. He did not believe that the City should have bothered submitting an application for the second round as the cities with much stronger needs than the City of Morgan Hill submitted applications. He said that it is difficult for individuals to award a grant to build a library to a City that has a beautiful community center and is in the process of building an aquatics center and will be commencing with an indoor recreation center. It was his belief that the City would not be successful in round three nor go in with a credible proposal based on the memorandum he read and based on an assessment of the facts. There is a situation where a bond is being proposed, noting that it is only being proposed. In the tight financial situation that the State is in, he did not believe that there would be a high probability of the bond measure going all the way through the process. He felt that the City needs to develop a plan for a library that will be funded by the City and alternative resources other than State grants. He felt that the library committee needs to figure out how to build a library and not place an ounce of resources into submitting another proposal that will fail or betting on a funding source that has a low probability of coming through.

Jeanne Gregg concurred with the comments expressed by Mr. Dillmann. She felt that it is a false hope that the City would get a library built other than paying for it and that the longer the City draws this out; the further away the City gets away from accomplishing a library. She knows that the Council will think that it wants to optimize its chances, keeping its chances for receiving bond funding open. Meanwhile,

the City would request that the library subcommittee work on alternatives. Should the City apply for the bond money, it is not applying for the money; it is applying for a specific grant, building the library exactly as outlined in the grant proposal. If the City receives bond funding, the City would not be able to build something else. She felt that one way or another, the City is wasting its time. She felt that the City is putting off further and further the reality of accomplishing a library. She indicated that library supporters are upset as individuals who voted for the extension of the RDA were under the impression that they were going to get a new library and want to know when the library will be built. She said that it is difficult to explain to individuals that Morgan Hill provides the building but that the JPA provides the funding and operations of the library. She stated that she could not get citizens committed to supporting a tax measure for library operations because the City does not have a new library. It was her belief that it was a false hope that the City can continue to pursue State funding and still proceed with something else on the side. She did not believe that they could both be accomplished in parallel. Meanwhile, the City is complicating the issue for the average citizen. She said that the parcel tax issue will be placed on the ballot on March 2, 2004. If the supporters of the parcel tax do not have a commitment to tell the voters of Morgan Hill that it needs to vote for the parcel tax in order to continue the operation of the library, the voters will defeat the tax measure because they are upset that they have not gotten their library.

Mark Grzan stated that although there are a lot of barriers, he felt that the City should apply for the third round of bond funding. This would allow the Council to demonstrate to the public that it did all that it could to attain bond funding. He requested that the Council consider the library's location. He stated that he was a strong advocate of having a library adjoin the new community center. He felt that there were great economies of scale in sharing resources and staff when you build a library next to a community park or a recreation center that have youth and adult programs. Planning for joint facilities would result in tremendous economies in terms of maintenance, services, etc. If the City starts spreading out its facility, the City would be transitioning all over the City to get to the facilities. He felt that the concept of a "one stop center" for a number of city services could work for recreation as well. He felt that co locating a library to other facilities would help the City's library proposal.

Mr. Dillmann said that the Council has to decide tonight whether or not to pursue the third round bond application. He noted that it has been indicated that an adequate job cannot be done with the application in the time available.

No further comments were offered.

**Action:** *Council Member Sellers made a motion, seconded by Mayor Pro Tempore Chang, to **direct** the Library subcommittee to review the new information submitted and return to the Council with a recommendation by December 3, 2003 on the round three bond application based upon knowing the library commission's position; **reviewing** every option available for a new library.*

Council Member Sellers suggested that if the library subcommittee decides to recommend pursuing the State grant, he urged the City to start the process as it would be more than likely to be supported by the Council.

## **25. WATER RATES**

Finance Director Dilles presented the staff report. He said that in September 2003 the Council heard a staff report recommending that the Council implement a 2% water rate increase previously scheduled for January 2004. The Council accepted this report and directed staff to return with additional analysis on projected revenues, expenditures, and fund balances for the various water funds. He indicated that staff has completed this analysis and has looked at a new projection of these factors and compared them with the projects in the previous study that the City's rate consultant put together. As a result of this analysis, it appears to staff that there is a \$3.1 million additional revenue requirement in order to cover the City's expenditures through June 2007 and meet the City's reserve requirements. He indicated that at a previous Council workshop, before the 2% increases were adopted, there was some discussion about the necessity of a rate stabilization fund. He indicated that the rate stabilization fund (20% of rate revenues) is an optional reserve. He said that the purpose of this reserve is to be used when there is a reduction in use by City customers or there is an interruption or natural disaster to help the City with any short fall in revenues. In the operation cost side, the City has a 25% cost reserve to cover unexpected increases in costs. He said that there may be some duplication between these two reserves but that in concept, one represents a higher cost while the other represents a drop in revenue. He said that the Council could state that the 25% operating cost reserve is enough to cover the City. However, having the other reserve is safer and affords one more level of protection. He addressed the reasons for the need of the \$3.1 million in revenue. He indicated that Olin Corporation has given the City \$450,000 thus far and does not reflect the other reimbursements that the City will be going after. Staff is concerned that this money may not come in on time to be able to assist the City with its costs. He said that staff proposes that there be a bond issue and that it should be pursued within six months or so in order to reimburse the City for costs already incurred and those that will be incurred for growth related projects. Also, in September, the Council asked staff to return and discuss strategies for decreasing water usage in conservation, including educating the public about these issues. In response, he indicated that public works staff has provided a water conservation summary attached to the staff report that describes the existing programs that both the City and Water District provides to encourage water conservation, including various educational programs carried out by the Water District. He indicated that public works staff also advocates for a stringent water conservation program by recommending that Council direct staff to take steps to make the City's voluntary water conservation landscape guide adopted in 1990 as mandatory for new development. Staff proposes that the Council direct staff to return with a rate structure for irrigation based on a tiered structure on the amount of water used or based on the site of the water meter for irrigation, establishing the rate to be paid in order to encourage water conservation.

Council Member Sellers said that had it not been for perchlorate costs, the City would not have a reason to increase the water rates. He inquired what would happen should the City be able to recover its costs from Olin Corporation. Would there be a decrease in water rates?

Mr. Dilles responded that should the City be reimbursed for perchlorate costs, he would recommend that the rate payers be credited back these amounts as long as the City has met its reserve requirements. He

said that the credit to the tax payers could take one of two forms: a check back to the rate payers; or lowering the water rates for a while.

Mayor Kennedy opened the floor to public comment.

Mark Grzan said that he has no choice when it comes to water and that the City has imposed a fee. He was in attendance to advocate that the City maintain the water fees as low as possible. He did not recommend that the City fund the issue of perchlorate with a rate increase. He felt that the rate increase is a long term solution to Morgan Hill's water issues and that the perchlorate issue would be resolved by Olin Corporation. He said that he would rather see monies taken from the reserve fund to deal with the perchlorate issue. He felt that the City's resources were meant to be used to fund issues like this and that he was not an advocate of using the reserves for some of the choices the Council has made. He stated that he would like to see the City pursue a much aggressive stands with regards to water conservation. He said that he could not support a rate increase unless the City adopts a measurable and viable water conservation plan that includes the use of drought tolerant native California plants on all City construction. The City should require the use of drought tolerant native California plants in new development or at least include Measure P points for those developments that use new water conservation, engineering and drought tolerant and native California plants. He felt that it was prudent to conduct an audit of the utility division on processes, workflow, productivity, combining resources, facilities and managing staff for greater efficiency and effectiveness. He also was a believer of outsourcing wherever possible and practical on regular issues. He felt that the City should embark on a measurable public awareness campaign that includes workshops, seminars, fairs, working with local nurseries in order to promote drought tolerant plant; offering incentives for those who use less water. He indicated that some cities require that when homes are sold that they be retrofitted with water saving conservation elements.

No further comments were offered.

In response to Council Member Tate's question, City Manager Tewes indicated that the Council will have the opportunity, in the workshop, to look at alternatives to rate payers paying for the perchlorate. He said that in staff's recommendation that the City raise the cash necessary to meet the perchlorate costs, by no means is staff suggesting that it would diminish its efforts to seek recovery from Olin. He said that in order to meet costs, the City needs to raise money. If and when the City is reimbursed by Olin, there needs to be a recognition of this fact in the rate structure. Staff would be recommending the appropriate credits and that staff will discuss this issue in the workshop.

Council Member Sellers said that even if the City uses all of its reserve funds, he did not believe the City would have enough funds, based on projections, to do what the City needs to do regarding perchlorate.

Council Member Tate expressed concern that there is an implication that the City would never receive reimbursement from Olin. He recommended that the City tie together the landscaping for drought resistance with fire resistance as well.

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Set a Water Rate and Water Conservation Workshop and to Set a January 21, 2004, Public Hearing for Consideration of Additional Increases in Water Rates Effective April 2004 and January 2005, 2006, and 2007.*

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Return with a Rate Structure at the Proposed Workshop for Commercial Irrigation Customers to Encourage Conservation.*

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Initiate Steps to Issue Water Revenue Bonds.*

**Action:**      *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Take Steps Necessary to Make the City's "Drought Tolerant & Landscape Irrigation Guidelines" a Requirement for All New Development.*

## ***City Council and Financing Authority Commission Action***

### **OTHER BUSINESS:**

#### **26.      REFINANCING OF WATER FACILITIES LOAN.**

Director of Finance Dilles presented the staff report.

Mayor/President Kennedy opened the floor to public comment. No comments were offered.

**Action:**      *On a motion by Financing Authority Commissioner Tate and seconded by Financing Authority Commissioner Chang, the Financing Authority Commission unanimously (5-0) **Adopted** the Resolution No. MHFA-1, Approving the Bylaws of the Authority.*

**Action:**      *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5735, Approving as to Form and Authorizing the Execution and Delivery of a Loan Agreement and as Assignment in Connection with the Refinancing of Bonds and Authorizing certain other Matters Relating Thereto.*

**Action:**      *On a motion by Financing Authority Commissioner Tate and seconded by Financing Authority Commissioner Chang, the Financing Authority Commission unanimously (5-0) **Adopted** Resolution No. MHFA-2, Approving as to Form and Authorizing the Execution and Delivery of a Loan Agreement and an Assignment in Connection with the Refinancing of Bonds and Authorizing Certain Other Matters Relating Thereto.*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Approved** Agreements with RBC Dain Rauscher Inc. for Financial Advisory Services and with Richards, Watson & Gershon for Special Legal Counsel Services, and **Directed** the City Manager to Execute These Agreements.*

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Wireless Telecommunication Ordinance – Mayor Kennedy

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:03 a.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**